

Trademark Litigation And Litigation Process In Vietnam

Vietnam's **intellectual property (IP) framework** has evolved rapidly during the past two decades. Vietnam is a member of major multilateral agreements such as the Paris Convention, TRIPS Agreement, the Madrid Agreement/Protocol, the EU-Vietnam Free-Trade Agreement and other bilateral agreements. These treaties and Vietnam's **Law on Intellectual Property (IP Law)** (amended in 2022), **Civil Code** (2015), **Civil Procedure Code (CPC)** (2015), **Penal Code**, **Criminal Procedure Code** and implementing decrees (Decree 65/2023/ND-CP, Decree 99/2013/ND-CP etc.) form the core of the country's trademark system. Vietnam offers several avenues for trademark owners to enforce their rights, including administrative actions, civil litigation, criminal prosecution, and border control measures. Each route has its procedures, benefits, and challenges, and understanding the entire process - from investigation and filing through trial and remedies - is critical for effective enforcement.

This guide, prepared by KENFOX IP & Law Office, a qualified IP Firm in Vietnam, provides an in-depth overview of Vietnam's trademark infringement laws, outlines how infringement is determined, and offers guidance on enforcement challenges and risk mitigation strategies.

1. Overview of Trademark Enforcement Mechanisms in Vietnam

The IP Law provides a multi-faceted approach for trademark owners to actively defend their rights.

[Trademark owners are provided with a range of options to enforce their rights](#), from technological measures and direct requests for infringement termination to seeking state intervention or pursuing legal action (ie, litigation or arbitration). They can also take enforcement actions under civil, administrative or criminal remedies and border control measures (Articles 198 and 199 of the IP Law):

- **Civil actions: Trademark owners** can initiate civil proceedings in court, seeking remedies such as:
 - ✓ injunctions to stop the infringing activities;
 - ✓ damages; and
 - ✓ other civil remedies.
- **Criminal actions:** In serious cases of trademark counterfeiting, trademark owners can file a complaint with the Economic Police (Article 153 of the Criminal Procedure Code). If convicted, infringers may face fines, imprisonment or both.
- **Administrative actions: Trademark owners can file a complaint with the Vietnamese administrative enforcement agencies, which can:**
 - ✓ issue decisions to stop the infringing acts;
 - ✓ impose fines; and
 - ✓ order the destruction of infringing goods.
- **Customs border measures:** Customs authorities are entitled to detain suspected infringing goods at the border. The trademark owner can then take further actions, such as filing a lawsuit, to prevent the release of the goods.

Supporting measures & strategy:

- **Conducting an IP assessment:** This involves obtaining an assessment from the Vietnam IP Research Institute and/or **the IP Office of Vietnam** to provide expert opinions on trademark infringement.
- **Arbitration:** Arbitration is also available for trademark disputes involving commercial matters. However, in practice, arbitration is not widely used.
- **Mediation:** Parties can attempt to resolve the dispute through mediation with the assistance of a neutral third party.

2. Enforcement Avenues

2.1. Administrative Enforcement:

Many trademark owners opt for **administrative actions** to address infringement, as they tend to be faster and less expensive than lawsuits. The IP Law (Art. 211) allows agencies like the MOST Inspectorate to handle infringements that harm the trademark owner, consumers, or society. Administrative enforcement typically involves [filing a complaint with the relevant agency](#), who can then conduct an **inspection raid** without prior notice to the infringer. If infringement is found, authorities can impose **administrative sanctions** such as:

fines (up to VND 500 million, approx. USD \$20,000, depending on the value of goods), **seizure and destruction** of infringing products or materials, and **orders to cease** the infringing acts. These measures can halt the infringement relatively quickly (often in a matter of months). However, the **limitations** of administrative actions include the lack of any compensation to the trademark holder (no damages are awarded) and generally modest fines that may be seen as a cost of doing business by larger infringers. Repeat infringements sometimes occur because the deterrent effect is weak. Additionally, administrative decisions can be inconsistent across cases, and there is limited transparency in how agencies assess complex trademark issues (they too may seek expert opinions). Despite these drawbacks, administrative enforcement is a valuable tool for **immediate relief** – for example, to raid a factory and remove infringing products from the market swiftly. Many foreign companies initially pursue administrative remedies to pressure the infringer and stop bleeding losses, then later consider civil suits if damages or long-term injunctions are needed.

2.2. Civil Litigation:

Bringing a trademark infringement lawsuit in the **People’s Court** (civil court) is the only route to obtain **monetary damages** or court orders for cessation of infringement (injunctions) and other remedies. In a civil action, a trademark owner can seek relief including an order to stop the infringing acts, **preliminary injunctions** (though these are rarely granted in practice), compensatory damages, a **public apology and correction**, and destruction of infringing goods. However, civil litigation in Vietnam is often **time-consuming and procedurally complex**. A first-instance trial can take 1–2 years to reach judgment, and an appeal (at a High People’s Court) can add another year or more. Courts have been cautious in granting **provisional measures** – in fact, to date Vietnamese courts have almost never issued a preliminary injunction in a trademark case, likely due to high evidentiary requirements and hesitation to act before a full trial. Even permanent injunctions after trial, while legally available, are seldom explicitly seen in judgments because often the infringing activity ceases or the trademark expires by the time of judgment (as occurred in at least one notable pharmaceutical case). Another challenge is the **expertise of judges**: until now, Vietnam has no specialized IP judges, so general civil judges handle trademark cases. Technical complexity means courts heavily rely on expert opinions and may proceed cautiously, contributing to delays. There is optimism that the planned **Specialized IP Court** (authorized in 2024) will, once operational, improve expertise and consistency. But until specialized courts are functioning, trademark owners should anticipate potential unpredictability in court outcomes.

Comparison of Administrative Route vs. Civil route:

The “**Administrative Route**” focuses on immediate cessation of the infringing activity, typically through market raids, and the imposition of sanctions on the infringer, such as monetary fines and the seizure or destruction of infringing goods. This path prioritizes deterrence and rapid removal of infringing products from the market. The “**Civil Route**”, conversely, focuses on formal dispute resolution, establishing a definitive judicial declaration of infringement, and compelling compensation for damages suffered by the trademark holder

The following table summarizes the operational and strategic differences between the two main routes available for trademark enforcement in Vietnam:

Table: Comparative Overview of Trademark Enforcement Avenues in Vietnam

Feature	Administrative Proceedings (Deterrence)	Civil Litigation Proceedings (Compensation)
Governing Authority	Inspectorates of Science & Technology, Customs, People’s Committees	People’s Courts (Economic Courts, Specialized IP Courts)
Primary Goal	Stop infringement, impose sanctions (fines, seizure/destruction)	Compensation for damages, definitive judicial ruling, permanent injunction
Speed/Timeline	Expedited (Typically 1–2 months for action completion)	Protracted (Typically 12+ months for first instance, plus appeal)
Remedies Available	Monetary fines, seizure/destruction, cease orders	Compensation for damages, permanent injunctions, public apology, destruction
Damages Claim	Statutory Not Possible	Statutory Possible
Required Documentary Compliance	Compact, simple (Notarized Trademark, PoA)	Strict compliance (Notarized & Legalized Trademark, Lawsuit Petition and PoA)

Enforcing trademark rights in Vietnam can be pursued via multiple avenues, each with advantages and drawbacks. Understanding these mechanisms and the practical challenges is crucial in assessing how likely and how effective a remedy might be in case of infringement.

2.3. Criminal penalties:

Severe counterfeiting can lead to criminal prosecution. **Criminal measures** are available **only** where someone **intentionally** uses a **counterfeit trademark or GI** - that is, a sign **identical or virtually indistinguishable** from the registered mark for the same goods/services. **Mere similarity (confusion-only cases)** is normally handled by **administrative or civil** routes, not criminal prosecution. Sanctions include fines and imprisonment (the Penal Code distinguishes between “less serious”, “serious” and “very serious” crimes). Trade mark crime under Art. 226 of Vietnam’s Criminal Code (Law No. 100/2015/QH13, as amended) is **initiated upon the right holder’s complaint**; police rarely act *ex officio* without it (typical workaround is an administrative raid first, then escalation once thresholds are shown), except for large-scale counterfeit manufacturing and trading. Police may require genuine products for comparison. Criminal proceedings are often reserved for cases involving large volumes, dangerous goods or repeat offenders.

An act of *intentional* trademark infringement is only considered criminal when it reaches a specific threshold of seriousness. The authorities will not prosecute unless the infringement is committed:

- ✓ **For commercial purposes;** AND
- ✓ Meets at least **one** of the following quantitative thresholds:
 - **Illicit profit** of **VND 100,000,000** (approx. USD 4,000) or more.
 - **Causes losses** to the trademark owner of **VND 200,000,000** (approx. USD 8,000) or more.
 - The **value of the infringing goods** is **VND 200,000,000** (approx. USD 8,000) or more.

If the act does not meet these thresholds, it will be handled through administrative or civil measures.

Penalties at this level: fine **VND 50–500 million** or non-custodial reform (**≤ 3 years**). Aggravated cases (organized; repeat; illicit profits **≥ VND 300 million**; damage or goods’ value **≥ VND 500 million**) carry **higher fines** up to **VND 1 billion** or **imprisonment 6 months–3 years**.

Corporate liability (commercial legal entities). Fines start at **VND 100–300 million** and scale up to **VND 1–3 billion** or **suspension of operations** in aggravated cases; ancillary bans (e.g., raising capital) may apply.

2.4. Customs and Border Measures:

Vietnam’s Customs Law in conjunction with the IP Law provides **border control measures** to help trademark owners prevent infringing goods from entering or leaving the country. A trademark owner can record its trademark with Vietnam Customs and request monitoring of specific goods. Upon recordal, Customs will alert the IP holder or suspend clearance if suspected infringing goods are detected at the border. The trademark owner then has a short window (typically 10 working days, extendable by 10 more) to inspect the goods and initiate legal action (administrative or civil) to confirm infringement. This mechanism is particularly useful against **imports of counterfeit or trademark-infringing products**, as it can stop them before they penetrate the domestic market. Vietnam has a centralized **Customs Recordal System**: a request filed with the Customs Control Department is circulated to all provincial customs offices for enforcement. In practice, **customs measures** are more frequently used for trademark counterfeits, but trademark holders (especially in pharmaceuticals, electronics, or mechanical devices) can and do use this tool. One challenge is that customs officials may not be equipped to judge complex trademark issues on the spot, so close cooperation and providing clear identification guides is key. Also, the trademark owner must post a security bond when requesting suspension of goods, to cover costs in case the goods are later found non-infringing. Customs enforcement, while preventive, ultimately needs to be followed by a substantive determination (via administrative or civil route) to seize and dispose of the goods.

2.5. Enforcement Challenges and Practical Issues:

Enforcing trademarks in Vietnam comes with notable challenges:

- **Judicial Capacity:** As noted, the general courts have limited experience with trademarks. This has led to slow proceedings and, in some cases, **reluctance to fully grant remedies** like injunctions or large damages. Trademark owners often face an uphill battle quantifying damages to the court’s satisfaction. Vietnamese courts require proof of **actual losses directly caused** by the infringement (lost profits, etc.), which can be hard to establish, especially for foreign trademarkees without local sales data. It is common that damage claims are either rejected or kept low due to insufficient proof of a causal link. For example,

in one recent case, the trademarkee initially sought ~VND 500 million in damages but ultimately was awarded only ~VND 59 million (about US\$2,600) corresponding to documented attorney fees. This illustrates that Vietnamese courts tend to award **nominal damages** or fee reimbursement unless substantial loss is concretely shown.

- *Administrative Limits:* While fast, administrative enforcement offers **no damages** and only administrative fines. These fines are capped (often not exceeding a few tens of thousands of dollars) and thus may not deter a well-funded infringer. Additionally, once an administrative action is done, an infringer could in theory resume activities in a different location or form, requiring a new complaint – there’s no long-term injunction from an administrative decision. Trademark owners often express that administrative outcomes, though quick, “rarely satisfy” their goals completely.
- *Delay Tactics:* Alleged infringers in Vietnam commonly resort to **delay tactics**, the most typical being filing a **trademark invalidation** challenge at the IPVN to stall the enforcement process. As mentioned, many enforcement authorities (including courts and administrative bodies) are inclined to stay proceedings pending the outcome of validity challenges, which can take years. However, a 2023 court judgment set a promising precedent by proceeding with the infringement case despite a concurrent invalidation filing, emphasizing that the IP Law did not mandate a stay. This suggests a trend toward preventing bad-faith delays, but trademark owners should be prepared for a potentially **lengthy timeline** if the defendant actively contests validity.
- *Resource and Awareness Gaps:* Another challenge is that domestic companies (especially in certain industries) historically have low awareness of [trademark rights](#). This means infringement might not always be willful counterfeiting, but rather ignorance of a trademark’s existence. Still, once notified, some infringers may not take it seriously until formal action is taken. On the enforcement side, agencies and local courts may have limited resources or technical expertise to handle complex trademark matters, leading them to rely on external experts and higher authorities. Consistency in decisions has been an issue – similar trademark cases might see different outcomes depending on the forum or expert consulted.
- *Criminal Enforcement:* Criminal liability targets **counterfeit trademark use**; “just similar” marks usually fall short and are handled administratively or civilly. You must evidence that the sign is **identical or nearly identical** to the registered mark, tied to the same goods/services. Criminal cases require **proof of intent, significant damage, or large-scale infringement** (e.g., goods valued over VND 100 million). Criminal liability requires proving the infringer acted “**intentionally**”. This is a much higher standard than administrative liability. Infringers will almost always claim ignorance. Common defenses include: “I’m just a reseller, I thought the goods were genuine,” “I bought them from a third party”, or “I didn’t know this brand was registered in Vietnam”. Proving their state of mind requires significant investigative work, such as finding internal communications or proving they were the manufacturer.

Criminal enforcement is actually limited. In 2023, out of 776 resolved IP infringement cases, only five were pursued through criminal proceedings. Due to lack of specialized training, knowledge and resources in IP law enforcement,

Despite these challenges, [Vietnam’s IP enforcement](#) landscape is gradually improving. The establishment of specialized IP courts by 2025 is expected to enhance judicial expertise. Vietnam’s commitments under new-generation trade agreements (such as CPTPP and EVFTA) are also driving stronger IP enforcement standards and remedies. Trademark owners should weigh the pros and cons of each enforcement route and possibly use a **combination** - for example, an administrative raid to promptly stop sales, followed by a civil suit for damages. The choice will depend on the urgency, the importance of monetary relief, and the nature of the infringer.

3. Handling trademark infringement under “Administrative Proceedings” in Vietnam

3.1 Jurisdiction and competent enforcement authorities

Choosing the correct administrative authority is essential to ensure competence and avoid procedural rejection.

- **Inspectorate of the Ministry of Science and Technology (MOST) and provincial Science & Technology Inspectorates (DOSTs):** The administrative authorities with primary competence over **all industrial property infringements**, including trademarks. For **complex matters**—those involving sophisticated legal or technical issues, high-value stakes, or **multi-provincial operations** - escalation

to the **central MOST Inspectorate** is advisable. For **localized enforcement** within a single province or city, the **DOST Inspectorate** has jurisdiction to investigate, conclude infringement, and impose administrative sanctions within its territory.

- **Customs Authorities:** These authorities serve as a crucial "gatekeeper" at the borders. They can place goods under **customs supervision (recordal/watch-listing)** and, upon a founded suspicion, **temporarily suspend clearance** of imports/exports for rights-holder action. Customs with full competence to monitor, block, and seize suspicious imported or exported goods. **Customs recordal** is a highly effective preventive tool, especially for foreign rights holders seeking early detection and rapid border intervention.
- **The Market Management Bureau (MMB):** It is crucial to understand that although the MMB is highly active in enforcing trademark and copyright rights, its jurisdiction **explicitly excludes trademark rights** relating to the acts of trading and transporting infringing goods in the marketplace. Therefore, trademark holders must rely heavily on the MoST and DoST Inspectorates. For cases involving infringement across multiple provinces, using the centralized authority of the Ministry Inspectorate (MoST) provides superior resources and legal capacity to handle the complexities and ensure enforcement across broader territories.
- **Police (criminal route):** Police can conduct intelligence-gathering, surveillance, searches/seizures (with proper warrants), and evidence preservation - often coordinating with **MOST/DOST Inspectorates, Market Surveillance, and Customs** during joint raids. Criminal investigation and prosecution in Vietnam primarily target **trademark counterfeiting** and [copyright piracy](#) under the Penal Code. Police involvement is typically limited to complex networks or where **ancillary crimes** (e.g., smuggling, counterfeit labeling, tax fraud) are implicated.

3.2 Dossier/Document Checklist (Administrative)

A foreign trademark owner seeking administrative handling of an alleged trademark infringement in Vietnam should submit:

- Original notarized Power of Attorney (PoA).
- A notarized/certified copy of the Trademark Registration Certificate.
- Evidence of infringement (genuine and accused samples, test-buy records, invoices, photos/videos).
- A favorable "[Assessment Conclusion](#)" from the NIIP/VIPRI. The **NIIP** (National Institute of Intellectual Property) (formerly known as "**VIPRI**" (Vietnam Intellectual Property Research Institute) issues these conclusions. For a complex issue like **trademark infringement**, which requires analysis about likelihood of infringement, this "**favorable Assessment Conclusion**" is **highly recommended**, it's often a **practical necessity** for Vietnamese administrative enforcement authorities (like the Inspectorates) to accept and process the case due to the complexity of trademark infringement claims. Without it, the authority may struggle to proceed confidently.
- A comprehensive Petition detailing the legal grounds, infringement analysis, arguments, and requests for inspection.

3.3 Administrative Trademark Enforcement - Field Raid Workflow

Overview: In trademark cases handled administratively, the competent authority forms an "**Inspection Team**". The Team may invite the right holder/its agent to accompany and may request local Police to ensure safety and order during the raid. Premises (factory/warehouse/shop) are inspected and infringing goods identified for seizure or sealing; records are made contemporaneously. The legal basis for sanctions and procedures remains **Decree 99/2013/ND-CP (as amended)** and the **Law on Handling of Administrative Violations (2012, amended 2020)**; note that **Decree 65/2023/ND-CP** replaced parts of Decree 105/2006 on IP enforcement guidance.

Basic procedures in enforcement of trademark infringement under administrative procedures:

[1] Petition filing: The right holder (or IP agent) files a **Petition for handling IPR infringement** with a competent enforcement authority (e.g., Science & Technology Inspectorate/Market Surveillance/Customs, as appropriate). If the matter lies with a different authority, the receiving authority guides re-filing or forwards to the competent one. (Coordination among authorities is permitted).

[2] Dossier check & supplementation: The authority examines (i) the Petition and (ii) the supporting evidence. If anything is missing, the requester is asked to **supplement within the set time window** (commonly 30 days in practice).

[3] Acceptance & Inspection Decision: When requirements are met, the authority issues a **Decision on Inspection** and may allow the right holder/agent to accompany and witness the handling process. **Inspection Decisions must be announced within 15 days after signing** under the Inspection Law.

[4] On-site inspection (raid): The Inspection Team conducts the raid, draws up a **Minutes of Administrative Violation** if infringement is found, and may:

- **Temporarily seize** suspected infringing goods (with a seizure decision and separate minutes), or
- **Seal** the goods and require the alleged infringer to preserve them pending a competent person's decision. Expert opinions can be requested where needed (e.g., technical or GI assessment).

[5] Criminal referral (if applicable): If the acts show **signs of a crime**, the administrative authority forwards the case to criminal-procedure bodies. This follows the **Law on Handling of Administrative Violations (2012, amended 2020)** framework.

[6] Sanction Decision: After the violation record is made, the competent person issues the **Sanction Decision** generally **within 7 days** (or **up to 30 days** for complicated cases). Sanctions include **warning** or **fine**, with ancillary remedies as appropriate.

[7] Fine ranges & remedies: Under **Decree 99/2013/ND-CP** (IP administrative sanctions), the **maximum fine** is **VND 250,000,000** (≈ US\$10,000) for **individuals** and **VND 500,000,000** (≈ US\$20,000) for **organizations**, with additional measures such as **confiscation, destruction/removal of infringing signs, suspension of business (1–3 months), and disgorgement of illicit gains**.

Administrative Sanctions and Remedies for Trademark Infringement (Vietnam)

Administrative action against trademark infringement may involve both **principal sanctions** and **ancillary measures**, together with **remedial obligations**.

(i) Principal sanctions. Authorities may issue a **warning** or impose a **monetary fine**. As currently framed, the **maximum fine** is **VND 500 million** (≈ US\$20,000) for **organizations** and **VND 250 million** (≈ US\$10,000) for **individuals**, depending on the nature and value of the infringing goods or services. In addition, authorities can order the **cessation of infringing use** and the **seizure** of infringing goods for destruction.

(ii) Additional (aggravating) sanctions. Considering the nature and severity of the violation, authorities may also order:

- **Confiscation** of material evidence and the means used to commit the violation; and/or
- **Suspension** of the production, trading, or provision of infringing products/services for **1–3 months** from the effective date of the decision.

(iii) Remedial measures. One or more remedial obligations may be imposed, including:

- **Forcible removal** and **destruction** of infringing elements on goods or business means;
- **Re-export** (bringing out of Vietnam) of **transit goods** that infringe industrial property rights;
- **Destruction** of infringing goods that may harm human, animal, or plant health or the environment; of **stamps, labels, packaging**, and other articles bearing infringing elements; and of **protection titles/certificates or other documents** that are modified, erased, or counterfeited;
- **Correction of indications** on industrial property (forcible modification/addition) and **public correction of errors** where misleading indications were given;
- **Confiscation** of dispersed material evidence or means; and
- **Financial disgorgement:** forcible **remittance of illegal gains**, including an amount equal to the value of material evidence or means that were **sold, dispersed, or destroyed** (e.g., the value of goods destroyed, disposed of, or sold illegally).

[8] Execution & coercive enforcement: The infringer must **execute the Sanction Decision within 10 days of receipt** unless a longer period is stated in the Decision. Failure triggers **coercive enforcement** measures under the Law.

[9] Complaints / judicial review: The sanctioned party may **file an administrative complaint** (first-time, then second-time) or **file an administrative lawsuit** in court; appellate procedures follow the Civil Procedure Code for court judgments/decisions. (The Sanction Decision generally remains executable while a complaint/lawsuit is pending, save for statutory exceptions).

4. Handling trademark infringement under “Civil Proceedings” in Vietnam

4.1. Jurisdiction and competent authorities (civil route)

Trademark infringement suits are brought in the **People’s Courts** under the **Civil Procedure Code**. Following 2024-2025 reforms, Vietnam now has **two first-instance, specialized IP courts** – one seated in **Hà Nội** and one in **Hồ Chí Minh City** – with **territorial jurisdiction** split nationwide. Hà Nội IP Court covers **~20 northern/central provinces**; HCMC IP Court covers the **remaining ~14 provinces/cities**.

See our article titled “[Specialized IP Court: A “Revolution” in Resolving IP Disputes in Vietnam](#)” or “[专门知识产权法院：越南解决知识产权争议的“一场革命”](#)”

The Specialized IP Court will have exclusive jurisdiction over first-instance [IP cases](#) (i) Civil and commercial IP disputes (trademarks, utility solutions, industrial designs, trademarks, geographical indications, copyrights, plant varieties, trade secrets, unfair competition related to IP, etc.); (ii) Administrative lawsuits in IP matters (e.g., challenges to administrative decisions by IP authorities) and (iii) Technology transfer–adjacent disputes within the allocation made by the NA Standing Committee. Older cases in general courts continue under transitional rules.

Territorial jurisdiction is determined primarily by the **defendant’s domicile/head office** (CPC Art. 39); for tort-based claims, the **plaintiff may alternatively sue where damage occurs or at its own domicile** (CPC Art. 40). Appeals lie to the regional **High People’s Courts** and ultimately to the **Supreme People’s Court**. **Trademark invalidation** proceeds before the **IP Office of Vietnam**, with judicial review by the courts via administrative suits. Provisional measures (IP Law **Arts. 206–208**) and court-appointed technical expertise are available to preserve evidence and prevent ongoing harm. Civil judgments are executed by the **Civil Judgment Enforcement** system under the **Ministry of Justice**.

Currently, civil IPR cases are handled by the Economic Courts within the Provincial People's Courts, typically located where the defendant resides, works, or has its head office. A critical procedural hurdle for foreign trademarkees is the requirement that all key documents, including the Power of Attorney, the Trademark Certificate and the lawsuit petition **must be notarized and legally authenticated (legalized)** for submission to the Vietnamese Court.

While it is expected that Specialized IP Courts of Vietnam will come into operation by the fourth quarter of 2025, others project that the IP Courts may not be fully operational until 2026 or even 2027. This delay means that foreign trademarkees commencing civil action in the immediate future must still contend with generalist judges. The historical lack of specialized judges has resulted in prolonged cases, inconsistent rulings, and a high rate of case reversal/amendment, as demonstrated by leading cases lasting five years and requiring Supreme Court intervention. Consequently, the reliance on a concrete, favorable NIIP Assessment Conclusion remains crucial in the civil system, as it provides non-specialized judges with a trusted, authoritative technical basis for their eventual rulings.

4.2. Basic procedures in enforcement of trademark infringement under civil procedures:

(i) Filing the lawsuit (statement of claims)

- **Petition & format:** The plaintiff files a lawsuit petition with supporting documents/evidence per Civil Procedure Code (**CPC**) Article 189.
- **Evidence standards:** The plaintiff bears the burden of proof and must submit admissible evidence (incl. foreign-language docs with proper translation/legalization) under CPC Arts. 91–97.
- **Court review on receipt:** Within 03 working days of receipt, the Chief Justice assigns a judge; within 05 working days the judge reviews and may request supplementation, accept, or return the petition in

the cases prescribed by law. If accepted, the plaintiff is notified to advance the court fee within 07 working days. (CPC 2015 Arts. 191–195)

- A return/refusal decision may be complained about under the CPC. (CPC 2015 Art. 194)

(ii) Provisional (injunctive) measures in IP cases

- Grounds & timing: Upon or after filing, the rights-holder may request provisional measures where (a) **irreparable harm** is likely, or (b) there is a risk that infringing goods/evidence will be destroyed or become untraceable. (**IP Law Art. 206**).
- Security: The applicant must provide **security = 20% of the value of the goods**, or **≥ VND 20,000,000** if unascertainable; a bank guarantee is also permitted (IP Law Art. 208(2)).

(iii) Post-acceptance: Service, pleadings, and conciliation

- Notice to defendant: Within **3 days** of acceptance, the Court notifies the defendant of the claims. The defendant typically has 15 days from receipt to submit a written response. (CPC 2015 Art. 196)
- Conciliation/mediation: The court conducts mediation meetings except in exempted cases (CPC Arts. 205–206). If settlement is reached, the court **recognizes the agreement** (CPC Art. 212).

(iv) Trial preparation and pre-trial decisions:

- Within **04 months** from acceptance (extendable in complicated cases), the judge issues one of the following decisions: a) Recognize settlement; b) Suspend; c) Terminate; or d) **Bring the case to first-instance trial**. (CPC 2015 Art. 203.3)

(v) First-instance hearing

- Within **01 month** from the “bring-to-trial” Decision (extendable to **02 months** for legitimate reasons), the Court opens the first-instance hearing. (CPC 2015 Art. 203.4)
- The hearing follows the CPC sequence: opening, oral argument, deliberation, and pronouncement (**CPC Arts. 239–269**).

(vi) Appeal (appellate procedures)

- Time to appeal: A party has **15 days** from pronouncement to appeal the first-instance judgment; if absent, the period runs from **service or posting** (CPC Art. 273).
- Appellate court: Appeals are heard by the **High People’s Courts** sitting as appellate courts; the **SPC** handles cassation/reopening, not routine appeals.
- Appellate timelines: Upon acceptance, the appellate court may: **suspend, terminate, or bring the case to appellate hearing**; the hearing must be opened within **01 month** of the decision (extendable to **02 months** with proper cause) (CPC 2015 Arts. 286–287, 289–315)

After acceptance, the appellate court proceeds under CPC Chapter on appeals (e.g., **CPC Art. 286** on decisions to suspend/terminate/bring to appellate trial; hearing within ~1–2 months after the decision, depending on grounds).

(vii) Cassation / supervisory & rehearing

In special circumstances and on statutory grounds, legally effective judgments may be reviewed under cassation (supervisory) or rehearing procedures by competent bodies within the **Supreme People’s Court/Procuracy**. (CPC 2015, cassation/rehearing chapters)

(viii) Enforcement of judgments

Once effective, the prevailing party may request civil judgment enforcement within **05 years** from the effective date; the enforcement agency issues a decision within **05 days** of a valid application. Enforcement fees apply under the prevailing regime. (Law on Enforcement of Civil Judgments, Art. 30.1; procedural provisions on issuance of enforcement decisions)

Checklist: Civil Litigation Procedure (First Instance)

Step	Action by IPR Holder/Counsel	Timeline Estimate (From Filing)	Key Procedural Event
1	Preparation and Filing of Lawsuit Petition	Varies (Requires pre-filing investigation)	Notarized/Legalized Trademark & PoA, Evidence of Infringement, Lawsuit Petition, NIIP Conclusion
2	Court Acceptance Review	8–10 working days	Court issues official Notice on acceptance or refusal.
3	Litigation Commencement & Defendant Response	Varies	Court notifies defendant; defendant may make counter-claim
4	Provisional Urgent Measures (PUMs)	Short term (Upon or after filing)	Court decision on preliminary injunction (PUM) application.
5	Mandatory Mediation Period	Up to 6 months	Compulsory mediation meeting(s) held; additional evidence can be given
6	Decision to Bring Case to Hearing	Within 2 months (Post-mediation failure)	Court sets date for first-instance trial.
7	Trial and First-Instance Judgment	Varies (Total litigation often exceeds 12 months)	Court issues judgment settling the case (remedies and damages).
8	Appellate Procedure	15 days (from judgment pronouncement)	Filing appeal against first-instance decision.

4.3. Mediation and/or other forms of settlement discussions: Are they required by the court in Vietnam or merely optional to the parties?

In Vietnam, mediation and other forms of settlement discussions are encouraged and, in some cases, are required by law. Vietnamese courts must organize **court-led mediation (conciliation)** and create conditions for the parties to settle their civil dispute.

Civil suits: The courts are responsible for conducting mediation and creating favourable conditions for the parties to reach agreement with one another on the resolution of civil cases (Article 10 of the Civil Procedure Code (CPC)), except where:

- the case involves matters that cannot be mediated by law; or
- the parties have explicitly agreed to opt out of mediation (Articles 205, 206 and 207 of the CPC).

Mediation is a mandatory step in Vietnamese civil proceedings, including those involving IP disputes. Parties are often required to participate in mediation efforts as a first step to resolve disputes amicably. If mediation fails, the case can then proceed to litigation. If mediation leads to a settlement, the agreement is enforceable, which means that the court will recognise and formalise the agreement as a judgment or decision (Article 212 of the CPC).

Criminal proceedings: Mediation and settlement discussions are not applicable in criminal proceedings. The **Criminal Procedure Code** lacks provisions for mediation, as criminal cases are prosecuted by the state, focusing on public justice and punishment. However, **Article 155** allows victims to withdraw their complaints in certain minor cases, leading to dismissal. This is not formal mediation, but it can result in the case being dropped if the victim chooses not to pursue prosecution. Overall, criminal law emphasises punishment over reconciliation or settlement between parties.

Why IP parties should use “mediation” mechanism at Court: Mediation lets both sides test their legal positions early and control risk, cost, and publicity. A court-recognized deal **ends the case** and avoids the cost, delay, and publicity of litigation. If you are the IPR holder, prepare a concise brief (registrations, use evidence, confusion analysis, sales/stock figures) so the judge-mediator sees the merits quickly. If you are an alleged infringer, “mediation” is a good opportunity to show how the lawsuit or IP infringement claims are ungrounded, the IP rights are not certain, under attack and the reasons why the IPR holder should not be aggressive.

4.4 Civil remedies

Available Civil Remedies (IP Law Article 202): If infringement is established, the court may order one or more of the following:

- [Compelling termination of the infringing act.](#)
- Compelling public rectification and apology.
- Compelling performance of civil obligations.
- Compelling compensation for damages.
- Compelling destruction or non-commercial distribution/use of goods, materials, and implements predominantly used for the production of infringing goods.

4.5 Provisional Urgent Measures

Preliminary Injunctions (Provisional Urgent Measures) (IP Law Arts. 206–210 (grounds, types, procedures, security))

Grounds for Provisional Urgent Measures: A right holder may ask the court to apply provisional urgent measures upon or after filing suit where **either** (i) there is a threat of **irreparable damage** to the IP owner/interests, **or** (ii) there is a threat that **infringing goods or key evidence will be dispersed or destroyed** if not protected in time (Art. 206 IP Law). The available measures are applied under the Civil Procedure Code framework (Art. 114 CPC), and courts decide on complete requests **within 48 hours**. In such a case, IPR holders/Plaintiff who requests an injunctive relief must deposit “a sum of money equal to twenty (20) per cent of the value of the goods subject to the application of provisional urgent measures, or at least twenty million (20,000,000) Dong (approx. US\$ 900) where it is impossible to value such goods” (*Article 208.2 of Vietnam IP Law*).

What Provisional Urgent Measures are available: Under Article 114 of Vietnam’s Civil Procedure Code (CPC), courts may apply **16 named provisional emergency measures** across all civil disputes. This includes actions such as:

- **Attachment or seizure** of assets.
- **Prohibiting the transfer** of ownership or movement of property.
- **Freezing bank accounts** or other financial assets.
- **Inventory and preservation of evidence** or the status quo of a subject matter.

Courts may **tailor other suitable measures** where necessary to secure the claim or preserve evidence.

IP-Specific Measures (IP Law): Article 206 of the IP Law focuses on measures specifically **targeted at suspected infringing activities**. While implemented within the overall CPC framework, these measures are most commonly seen in IP disputes. They include:

- **Seizure or distraint** of allegedly infringing goods, raw materials, packaging, and means of production.
- **Prohibitions** on transferring ownership (e.g., sale), sealing/no change of status, or preventing displacement of the infringing items.
- **Preservation of evidence** specifically related to infringement.

In IP disputes, the most frequent PUMs are **seizure/dstraint** and **evidence-preservation** against the infringing items and production implements.

Security/Bond for Provisional Urgent Measures: When requesting Provisional Urgent Measures (PUMs), the applicant must furnish **security (bond)** to cover potential loss from a wrongly applied measure. Under **Article 208 of the IP Law**, security may be provided as:

- **Cash deposit** equal to **20% of the value** of the goods subject to the requested measure, or **at least VND 20,000,000** if valuation is not possible; **or**
- A **guarantee deed** issued by a **bank/credit institution**.

Challenges in obtaining injunctive relief: Vietnamese courts do grant provisional urgent measures (PUMs) under CPC 2015, Art. 114 and IP Law Arts. 206–210, typically *ex parte* where urgency/evidence-loss risks are shown. However, practice is cautious and petitioners must present credible *prima facie* evidence (ownership + infringement indicators) and provide security (commonly 20% of the value of the goods or ≥ VND 20 million, or a bank guarantee). Courts review the petition swiftly, but may refine, narrow, or refuse measures that are disproportionate or insufficiently supported. Respondents can seek modification/cancellation, and PUMs are

supervised for strict compliance. These safeguards can make PUMs document-heavy and, in some courts, slower than the statute envisions, especially when translations/legalization, valuation for the bond, or multi-location enforcement are involved.

4.6 Damage calculation

Nature and governing provisions: Damages in trademark disputes under Vietnamese law are **compensatory rather than punitive**. Compensation is aimed at restoring the right holder to the position they would have been in but for the infringement. The legal bases are Articles **204–205** of the Law on Intellectual Property (as amended). Article 204 recognises two categories of loss - **material** and **spiritual** - while Article 205 provides the methods for **quantifying** those losses.

Heads of recoverable loss:

(a) Material damages: Recoverable material loss may include:

- **Loss of property** (e.g., damaged equipment, write-offs of inventory);
- **Reduction in income or profit** (lost sales, price erosion, market-share loss);
- **Loss of business opportunities** (foregone contracts or tenders causally linked to the infringement);
- **Reasonable prevention/mitigation expenses** (costs of investigations, test purchases, cease-and-desist efforts, technical analyses).

(b) Spiritual damages: Where the infringement harms the right holder's **honour, dignity, or reputation**, the court may award a lump sum between **VND 5,000,000 and VND 50,000,000**, calibrated to the extent of harm proved.

(c) Reasonable attorneys' fees: In addition to the above, the court may order the infringer to pay **reasonable costs of engaging a lawyer**.

Quantification methods for material damages:

The plaintiff may request the court to determine compensation on **one** of the following grounds (choose the method best supported by evidence; avoid double counting):

Method 1: Actual loss + infringer's profits

- Components:
 - **Actual financial losses** suffered by the trademarkee; **plus**
 - **Profits gained by the infringer** attributable to the infringement, **provided that** the trademarkee's own profit reduction is **not already** included in the actual-loss component.
- Practical use: Suitable where the IPR holder can show volume diversion, price suppression, or incremental profits realised by the defendant.
- Evidence: Sales and margin data, expert apportionment tying profits to the trademarked features, market analyses.

Method 2: Hypothetical licence / transfer price

- Measure: A **reasonable royalty** benchmarked to the **transfer price** that would have applied had the defendant been licensed **within the scope of use actually made**.
- Practical use: Favoured where lost profits are hard to prove or the defendant's accounting is opaque.
- Evidence: Prior licences (own or comparable), industry royalty rates, contribution of the trademarked invention to the product, duration and geographic scope of use.

Method 3: Other material losses

- Catch-all for demonstrable, **law-compliant** loss items not captured above (e.g., enhanced QA/recall costs, additional marketing to restore brand position), supported by documentation and causation analysis.

Method 4: Court-assessed lump sum cap

- If damages cannot be determined under Methods A-C, the court may award a **discretionary amount based on the level of loss, capped at VND 500 million**.
- Practical note: This is a last resort and typically modest; parties should prioritise evidentiary pathways under A–C.

Challenges in proving causation and quantum:

A significant challenge in Vietnamese civil litigation is meeting the high burden of proof required to establish damages. Claims are frequently rejected when the evidence establishing the actual loss or causation is considered unreliable or "flimsy" by the court. In practical terms, even when infringement is successfully proven, [court-ordered compensation for damages](#) in Vietnam tends to be modest in comparison to major international jurisdictions.

Burden of proof and evidentiary standards:

- **Causation & quantification:** The IPR holder must show a causal link between the infringement and each claimed loss and provide **reliable, contemporaneous** documentation (financial statements, sales records, expert reports).
- **Apportionment:** Where only part of the defendant's product value stems from the trademarked invention, courts expect **apportionment** to isolate profits or royalties attributable to the trademarked features.
- **No double recovery:** Do not count the same economic harm twice (e.g., do not add the infringer's profits on top of the IPR holder's lost profits for the same units).

5. Defensive Strategies: Responses to Trademark Infringement Claims

Enterprises facing allegations of trademark infringement, particularly foreign firms entering the market, must prepare strong defensive strategies. Foreign enterprises operating in Vietnam, whether as plaintiffs or defendants, must understand the key strategies used to defend against trademark infringement claims.

5.1. Common defences

In Vietnam, several defences can be raised against a trademark infringement claim, as follows.

Invalidity of the trademark: The most potent defense strategy, applicable in both administrative and civil contexts, is filing a request with Intellectual Property Office of Vietnam for the invalidation (cancellation) of the underlying trademark. The core argument is that if the trademark is invalid, it cannot be infringed.

The defendant may argue that the plaintiff's trademark is invalid or should be revoked. This can be based on the mark failing to meet protection criteria, such as being non-distinctive, descriptive, deceptive or conflicting with prior rights (eg, a prior registered trademark, well-known mark, trade name, geographical indication, plant variety name or copyrighted work). Other grounds include:

- [bad-faith registration](#);
- non-use;
- flaws in the registration process; or
- violations of public order or morality.

Non-infringement: The defendant may contend that its use of the mark does not create a likelihood of confusion among consumers regarding the origin of the goods or services. This defence often involves a comparison of:

- the marks;
- the goods or services; and
- the marketing channels used by both parties.

Other defences:

- **Counterclaims: Allegations of Abuse of IP Rights:** Defendants in infringement lawsuits may file a counterclaim alleging that the plaintiff abused their IPRs. If the court determines that the plaintiff's enforcement action was unfounded and caused harm to the defendant, the defendant is entitled under Vietnam's IP Law (Articles 198.4 and 198.5) to recover reasonable costs and damages. This legal mechanism provides a deterrent against unfounded administrative or civil actions, placing pressure on competent authorities to conduct thorough evidence verification (including VIPRI assessment) before proceeding with enforcement.

- **Fair use:** The defendant's use of the mark falls under fair use, such as use of a person's name or descriptive terms in an honest manner.
- **Prior use:** The defendant used the mark before the plaintiff's registration and holds a prior use right, possibly in the form of a trade name.
- **Exhaustion of rights:** The plaintiff's trademark rights have been exhausted, as the goods bearing the mark were marketed with the plaintiff's consent and can be freely circulated.
- **Statute of limitations:** The plaintiff's claim is time barred as it was filed outside the statutory limitation period.

5.2. Counterclaim for revocation or invalidation of the trademark: Possibility, legal grounds and the process

In Vietnam, defendants in trademark infringement lawsuits can counterclaim for trademark revocation or invalidation, as allowed under both civil procedure principles and the IP Law.

The grounds for such counterclaims are specified in Articles 95 and 96 of the IP Law. Article 95 allows for trademark termination due to reasons such as:

- non-payment of renewal fees;
- voluntary relinquishment;
- business cessation;
- non-use for five consecutive years; or
- the mark becoming deceptive or generic.

Article 96 permits invalidation based on factors such as:

- bad faith;
- lack of entitlement to registration;
- ineligibility for protection;
- unauthorised application amendments broadening the protection scope or changing the nature of the applied-for mark.

The process for a counterclaim is as follows:

- The defendant can initiate the revocation or invalidation process by filing a request with the **IPVN**. The request must:
 - clearly state the grounds for invalidation; and
 - be accompanied by supporting evidence.
- The IPVN will then:
 - examine the request;
 - examine the documents/evidence submitted by both parties; and
 - issue a decision to invalidate the trademark or reject the request.
- The defendant can file a counterclaim with the court hearing the infringement case, attaching the revocation or invalidation request filed with the IPVN in the response to the infringement lawsuit. The court may suspend proceedings under Article 214.1(d) of the Civil Procedure Code (CPC) pending the IPVN's decision or proceed with the case.
- The court will ultimately review all evidence and arguments presented by both parties, including the outcome of the IPVN's invalidation proceeding, before ruling on both the infringement claim and the counterclaim.

6. Border control and preventative measures

Vietnamese law allows IPR holders to **record** their rights with Customs so officials can **screen imports/exports** for suspected infringements and, where appropriate, **temporarily suspend clearance**. This is a preventive, front-line enforcement tool.

Competent Customs Authorities in Vietnam

- **Customs Control & Supervision Department (“CCSD”)** under the **General Department of Vietnam Customs (“GDVC”)** - the central unit that receives and processes records/requests for customs **supervision** across Vietnam.
- **Provincial/Municipal Customs Departments and their Sub-Departments** - frontline units at ports, airports, and land borders that carry out **supervision** and **temporary suspension** on shipments.

Available Border Measures

Statutorily, in Vietnam, right holders may request two types of border measures to protect IP rights: (i) **Customs supervision**, and (ii) **Temporary suspension of customs procedures**. Use supervision to watch the borders nationwide; when suspect goods are flagged, use suspension to hold the shipment while infringement is assessed.

Step 1: File for “Customs Supervision” (nationwide watchlist)

An IPR holder is entitled to file with the **CCSD** a request for customs supervision measure (“Request for Supervision”) for a 2-year term, which can be renewed for another 2-year term. This measure is implemented at all Vietnamese border gates to detect any alleged counterfeits/infringing goods (“Alleged Infringing Goods”) imported into Vietnam. The IPR holder can then request for a temporary suspension of customs procedure over such Alleged Infringing Goods once they are detected.

Main procedures for customs supervision process are summarized as follows:

(i) Filing: IPR holders (*directly or through their authorized representatives*) file a Request for Supervision with the CSD.

(ii) Acceptance/Refusal: The **CCSD** issues a Notification of Acceptance or Refusal of the request in 20 working days from the date of full receipt of required documents (*Article 7.4, Circular No. 13/2015/TT-BTC*).

Post-acceptance actions.

In case of acceptance, the following actions will be taken:

- The **CCSD** updates the database system of IPR protection and send a copy of Notification of Acceptance to the Provincial/Municipal Customs Departments and the Anti-smuggling and Investigation Department (“**ASID**”) to commence supervision.
- The Provincial/Municipal Customs Departments and the ASID, upon receipt of the **CCSD**’s Notification, proceed with customs supervision.
- Sub-department of Provincial/Municipal Customs Departments, based on the **CCSD**’s Notification, commence measures of customs supervision and inspection of exported and imported goods which have signs of infringing intellectual property rights.

What happens next:

If a **suspected** shipment is detected under supervision, Customs (or CCSD via the local Sub-Department) notifies you so you can request **temporary suspension** on that shipment.

Step 2: Request “Temporary Suspension of Customs Procedures” (hold the shipment)

In case the Alleged Infringing Goods has been found imported into Vietnam, the IPR holder is entitled to file with a Customs Branch a “**Request for temporary suspension of customs procedure**” over such Alleged Infringing Goods (“Request for Suspension”). The temporary suspension will, once applied, enable the IPR holder to enforce as well as seek for injunctions against the Alleged Infringing Goods.

Main procedures for temporary suspension of customs procedure are summarized as follows:

(i) Filing a Request of Suspension: Upon detecting that Alleged Infringing Goods that has been imported into Vietnam, the IPR holder is entitled to file with a Customs Branch a request for temporary suspension of customs procedure over such Alleged Infringing Goods.

(ii) Receiving/Checking: Customs verifies (i) proof of right-holder status and (ii) shipment/commodity information and supporting evidence (Art. 9, Circular 13/2015/TT-BTC).

(iii) Paying guarantee amount: The applicant must deposit an amount of money equal to 20% of the value of the shipment or VND 20 million dong (~US\$770) (*in case the value of the shipment cannot be identified*) or a document of guarantee from a bank/credit institution (*Article 217, Vietnam IP Law*).

(iv) Issuing a Decision on temporary suspension: Within 02 working hours upon receipt of sufficient documents and deposit, a **Decision on Temporary Suspension** must be issued (*Article 10.1, Circular 13/2015/TT-BTC*).

Time-limit of suspension: The suspension lasts **10 working days** from the decision date and may be **extended once for up to 10 additional working days** upon the right holder's request with a corresponding additional deposit (*Art. 10.2, Circular 13/2015/TT-BTC*).

If the requester of suspension of customs clearance fails to meet requirements set out in point (ii) and (iii) above, Customs will issue a Notice of refusal of the request for customs suspension.

Customs ex officio option: If Alleged Infringing Goods are discovered, Customs may issue a **decision to suspend customs clearance** either (a) at the right holder's request or (b) **ex officio** to impose administrative sanctions.

Actions during suspension: While the suspension is in effect, Customs may:

- Request documents from the goods owner and right holder (catalogues, assessment conclusions, etc.).
- **Solicit an "expertise opinion" (in form of "Assessment Conclusion") from the NIIP/VIPRI** on likelihood of IP infringement.
- **Take and request samples** for assessment and require organizations/individuals to cooperate - aimed at determining whether infringement exists.

Outcomes:

- **If infringement is found**: Customs issues a decision to **officially docket** the case and settle it under **administrative procedures**, if within its competence (Art. 10.4(a), Circular 13/2015/TT-BTC).
- **If no infringement is found**: Customs issues a decision to **resume customs procedures** for the goods (Art. 10.4(b), Circular 13/2015/TT-BTC).

Other possible measures (Art. 10.4(c)-(f), Circular 13/2015/TT-BTC):

- Execute a **court order** if the right holder initiates civil proceedings.
- **Transfer** the matter to another enforcement authority if outside Customs' competence.
- **Temporarily suspend** handling upon formal notice of disputes regarding ownership/scope of protection from other state bodies.
- **Refer** the case for **criminal proceedings** where criminal indications are found.

Required documents for customs recordal in Vietnam

- Notarized & Legalized Power of Attorney;
- HS code of the goods subject to customs supervision/recordal;
- Certified/notarized copy of the IPR protection title;
- Photos of the genuine products;
- Photos of the counterfeit products, if any;
- Comparison chart between the genuine and counterfeit products, if any;
- List of authorized importers/exporters;
- Assessment on the IPR infringement issued by the IPR assessment state body of Vietnam, if any;
- Time and shipment information relating the Alleged Infringing Goods, if known;
- Receipt of the deposit payment;

Involved costs and timeline

For a customs supervision/customs recordal, the official fee is estimated at **US\$ 10**.

It may take 2-3 working days to make necessary preparations and file a request for customs supervision with the CCSD. The CCSD issues a Notification of Acceptance or Refusal of the request in 20 working days from the date of full receipt of required documents. The Customs recordal will be completed if sufficient documents are supplemented (if required) to the CCSD.

The customs recordal is valid for up to 02 years. The period may be extended once for two more years upon request. After the extension period expires, companies must re-file a new application if they wish to pursue the customs recordal.

7. Assessment of Trademark Infringement

Prior to initiating any enforcement action in Vietnam, the right holder should first review - on a mark-to-mark and goods-to-goods basis – to assess whether the third party’s product falls within the scope of trademark protection scope and whether that conclusion can be credibly proven. To that end, the right holder should (i) conduct an initial desk-review of the likelihood of confusion between the registered mark and the alleged infringing one, (ii) obtain samples or reliable infringement evidence through discreet investigation, and (iii) prepare a structured trademark infringement claim and, where appropriate, secure an expert assessment (e.g., from VIPRI/NIIP). **Only after the evidentiary foundation is in place** should the right holder select the enforcement pathway (administrative action for speed, civil litigation for injunctive relief and damages, and/or customs measures), anticipating possible validity challenges and preserving chain of custody for all evidence.

7.1. Definition of Trademark infringement in Vietnam

In Vietnam, trademark infringement occurs where:

- someone, without the permission of the trademark owner, uses a sign that is “identical” or “similar” to a protected trademark for goods or services that are identical, similar or related to those covered by the registered trademark; and
- this use is likely to cause confusion about the origin of the goods or services.

Additionally, using a sign that is identical or similar to a well-known mark, even for “unrelated” goods or services, constitutes infringement if it is likely to cause confusion or create a misleading impression about the relationship between the sign’s user and the well-known mark’s owner (Article 129 of the IP Law).

In light of the foregoing, Vietnamese law recognises both identical and similar trademark infringement (i.e., Infringement by “Identity” and Infringement by “Similarity”):

- Identical infringement** - occurs when the accused sign is identical to the protected mark and used for goods/services that are identical to those covered by the registration. It may also occur when the identical sign is used for similar or related goods/services and causes a likelihood of confusion.
- Similar infringement** - occurs when the accused sign is similar, but not identical, to the protected mark and is used for identical or similar goods/services in a way that is likely to confuse consumers. The law also treats “translations” or “transliterations” of well-known marks as infringement if the use is likely to mislead consumers even when the goods/services are unrelated.

When both conditions, similarity/identity of the sign **and** similarity/identity of the goods/services are satisfied, the likelihood of consumer confusion is high and the sign is deemed infringing. If the goods/services are “**remote**” or “**unrelated**”, even identical or similar marks may coexist without likelihood of confusion.

Under Article 213 of the IP Law, using a mark or sign that is **identical or substantially indistinguishable** from a protected mark on the “same” goods without the owner’s consent constitutes “**counterfeit mark goods**”. Counterfeit mark goods are a serious form of infringement that may trigger criminal liability. They are defined as *goods or packaging bearing a mark identical with or substantially indistinguishable from a protected mark (or geographical indication) without the owner’s consent*. Manufacturing, trading or transporting counterfeit mark goods can lead to monetary fines and imprisonment under the Penal Code (Article 226), and the goods may be seized or destroyed. Thus, “**identical infringement**” can be prosecuted as a criminal offence when it meets the definition of counterfeit mark goods.

7.2. How is a trademark infringement determined in Vietnam:

To determine trademark infringement in Vietnam, the following must be considered:

- the scope of protection of the mark;
- the nature of the allegedly infringing sign and its use; and
- whether there is a likelihood of confusion among consumers.

Additionally, the act must be unauthorised and occur within the jurisdiction of Vietnam (Article 129 of the IP Law; Articles 72 and 77 of Decree 65/2023/ND-CP).

Trademark infringement is determined through a two-pronged approach, focusing on a comparison of the marks and associated goods/services and the likelihood of confusion among consumers:

- First, the allegedly infringing sign is assessed to determine its similarity to the registered trademark, considering visual, phonetic and conceptual aspects. Additionally, the goods or services linked to the allegedly infringing sign are compared to those covered by the registered trademark to determine their degree of similarity or relatedness.
- Second, the likelihood of confusion is evaluated. If the marks and goods/services are “identical”, confusion is often presumed. Otherwise, it is assessed based on various factors, including:
 - the distinctiveness and reputation of the registered mark;
 - the degree of similarity between the marks and goods/services;
 - consumer perceptions;
 - marketing channels; and
 - evidence of actual confusion.

For well-known marks, even the use of a similar sign on unrelated goods/services can be considered infringement if it creates confusion or misleading impressions.

7.3. How to prove trademark infringement in Vietnam

The determination of infringement involves examining evidence and may require expert opinions from the **Vietnam Intellectual Property Research Institute (VIPRI)**. Enforcement agencies and courts typically follow this process:

[i] Collect evidence: The trademark owner should gather evidence of the accused party’s use of the mark (samples of goods, packaging, advertisements, invoices, sales receipts and import/export documents). A sworn notarised dossier may be used to secure evidence.

[ii] Request expert opinion (in form of “Assessment Conclusion”) from the NIIP or the IPVN: For administrative actions, an assessment conclusion from the NIIP is often required. The assessment examines whether the sign and goods/services meet the infringement criteria. Courts also rely heavily on these expert opinions when adjudicating civil suits.

[iii] File administrative complaint or civil suit: If the Assessment Conclusion from the NIIP concludes there is infringement, the trademark owner can file a complaint with the Market Management Bureau, Inspectorate of the Ministry of Science and Technology or other enforcement bodies. For civil remedies, a lawsuit can be filed in a competent Court. The statute of limitations and procedural rules must be observed.

[iv] Consider customs and criminal measures: For counterfeit mark goods or cross-border infringement, the owner may request customs to suspend clearance or seize goods at the border. In cases involving counterfeit mark goods, police investigation and criminal prosecution may be warranted, and goods can be seized, destroyed or re-exported

7.4. Steps to determine the likelihood of trademark infringement in Vietnam

Step 1: Compare the marks and the goods/services

Infringement is determined through a **two-pronged analysis**—comparing the marks and comparing the goods/services - to see if there is a likelihood of confusion. If both prongs are satisfied, the accused use infringes. Administrative, civil or criminal remedies may then be pursued.

[i] Mark-to-mark comparison - Examine whether the accused sign is “identical” or “similar” to the registered trademark. Consider visual, phonetic and conceptual similarities:

- **Identical marks** have the same structure and expression. For word marks, identical spelling and pronunciation may suffice; for logos or composite marks, identical design or layout is needed.
- **Confusingly similar marks** may share overlapping elements or similar overall impressions. Similarity can be based on *structure, pronunciation, phonetic transcription, meaning, presentation and colour*.
- Consider whether the mark has acquired distinctiveness; if it is highly distinctive, even small differences may not avoid confusion.

[ii] Goods/services comparison - Assess whether the accused goods/services are identical, similar or unrelated to those listed in the registration:

- **Identical goods/services** share the same nature, function and utility.
- **Similar goods/services** have similar nature or similar function/utility and are distributed through the same commercial channels. Goods and services may also be similar if they have a correlation in nature, function or method of realization (e.g., one is a component of the other, they are used together, or one is the result of exploiting the other).
- The examiner or court also looks at **how consumers encounter the goods/services**. If consumers are likely to encounter both products in the same marketplace and believe they share a common source, confusion is likely. Conversely, if consumers encounter them in different contexts, even identical marks may coexist without confusion.

[iii] Scope of protection for famous marks - For well-known marks, infringement may occur even when the goods/services are unrelated. Article 129 prohibits using signs identical or similar to famous marks or their transliterations for any goods/services if the use is likely to confuse consumers about the origin or imply an association. The 2022 amendments emphasise that even translations and transliterations of well-known marks can infringe.

Step 2: Evaluate the accused party’s acts against the definition of “use”

Trademark infringement requires “use” of the mark in commerce. Under Article 124.5 of the IP Law, using a mark includes:

- **Affixing the protected mark** on goods, packages, business facilities, service-provision means or transaction documents. This includes manufacturing products bearing the mark or placing the mark on advertisements and signage. It also extends to [manufacturing goods bearing the mark in Vietnam for export](#) only; some enforcement authorities consider this manufacturing to be unauthorized use.
- **Circulating, offering for sale, advertising or storing goods bearing the mark**. Circulating includes distributing or selling the goods through any channel. Advertising includes online marketing or sales promotions.
- **Importing goods or services bearing the mark**. Importing infringing products into Vietnam constitutes use even if the importer does not sell them.

When assessing an accused party’s conduct, a trademark owner should gather evidence such as product packaging, invoices, advertisements and customs records to show that these acts have occurred.

Step 3 - Check for legal exceptions

Finally, even if Steps 1 and 2 are met, you must check if the accused party has a valid legal defense. Vietnamese law recognises several exceptions where the trademark owner cannot prevent others from using a sign. Infringement is *not* deemed to occur if the act falls under specific exceptions provided by the IP Law, such as:

- **Fair Use (Descriptive Use)**: Using the sign in a descriptive manner (e.g., describing the quality or geographical origin of their *own* goods) without acting as a trademark.
- **Prior Use Rights**: The party was using the sign ([trade names](#) or company names) widely and in good faith *before* your trademark’s filing or priority date.
- **Exhaustion of Rights (Parallel Imports)**: The goods are genuine goods that were put on the market (in Vietnam or abroad) by the trademark owner or with their permission, and are now being re-sold by a third party.
- **Non-Commercial Use**: The use is for personal needs, research, or teaching purposes.

If the accused party's use falls within one of these exceptions, enforcement actions will likely fail. It is therefore crucial to evaluate the context of use before proceeding.

8. Conducting Investigations and Evidence Collection

The preparatory phase begins with an onsite or field investigation, which is critical before initiating formal actions. The main objectives of this investigation include verifying the alleged infringer's operational status and address, ascertaining the scope and scale of their business activities, collating definitive evidence of infringement (such as samples), and confirming if the infringer is committing any other related intellectual property violations. If the name and address of the infringer are unknown, market surveys targeting specialized stores (e.g., 10–15 stores in Hanoi or Ho Chi Minh City) may be conducted. The timeline for this phase typically ranges from 10 to 20 working days, depending on the number of targets and complexity.

Proving trademark infringement in Vietnam requires careful evidence gathering and addressing certain procedural burdens. Both the trademark owner (plaintiff) and accused infringer (defendant) should understand how evidence is evaluated by courts and what the burdens of proof are:

- **Evidence of Infringement:** The IPR holder (plaintiff) bears the initial burden to produce evidence that the accused product or process embodies all elements of the trademark claim. In practice, this often involves obtaining a sample of the alleged infringing product or documentation of the process, and conducting a detailed **comparison analysis** against the trademark claims. Common evidence includes product specifications, photographs, test reports, or expert **assessment conclusions** showing each claim element's presence. Notably, Vietnamese courts *highly value expert evidence* in technical IP cases. The court and parties have the right to invite **experts**, and written opinions of court-recognized experts or organizations can serve as evidence. In trademark cases, a typical approach is to seek an expert conclusion from the **Vietnam Intellectual Property Research Institute (VIPRI)** (recently reorganized as the National Institute of Intellectual Property, NIIP). VIPRI/NIIP provides official expert opinions on whether the accused product contains each of the trademark's claimed features and whether it infringes. These expert conclusions, while not legally binding on the court, carry significant weight and often form the basis of the court's determination. In fact, obtaining a favorable expert assessment is often a *precondition* before enforcement agencies or courts will proceed on a trademark complaint.
- **Acceptable Forms of Evidence:** Under the Civil Procedure Code, courts only accept evidence from certain enumerated sources. Relevant sources include **documents and physical materials** (e.g. product samples, technical manuals), **witness testimonies**, **expert examination conclusions**, **records from on-site inspections**, and **asset valuation results**. Affidavits or hearsay statements are generally not admissible unless they fall into one of these categories. All foreign-origin evidence (e.g. lab test results from abroad, foreign trademark documents) must typically be **authenticated and translated** to be accepted, which is an important practical consideration for multinational companies. Vietnam does not have American-style pre-trial discovery; therefore, the trademark owner must largely gather evidence through its own efforts or with the help of administrative raids. If a court action is determined by the plaintiff, it is advisable to utilize administrative authorities (e.g. MOST Inspectorate) to **raid and seize samples**, because this can be an effective way to secure hard evidence (like infringing products or manufacturing equipment) early on. Because the burden is on the plaintiff to prove infringement, having concrete evidence (and an expert report interpreting that evidence) is critical to success.

9. Obtaining an expert opinion/s (expert witness) on likelihood of trademark/design/trademark infringement from the NIIP

To enforce trademarks, industrial designs, or trademarks in Vietnam, the right holder must establish an **infringing element** under the standard applicable to each right:

- **Trademarks:** show that the accused sign used for the relevant goods/services is **identical or confusingly similar** to the protected mark.
- **Industrial designs:** show that the accused product's design is "**not significantly different**" from the protected design, assessed on the **overall visual impression** of the essential features.
- **Patent:** show that the accused product/process contains **all basic technical features** of at least one claim, either **identically** or by **equivalence**.

As supporting evidence, Vietnamese enforcement authorities and courts **commonly request independent expert opinions** in form of “**Assessment Conclusion**” - most often from the National Institute of Intellectual Property (“**NIIP**”), formerly, the Vietnam Intellectual Property Research Institute (“**VIPRI**”) - to analyze (i) similarity/“not significantly different” for industrial designs and (ii) identity/equivalence of claim features for patent (and, where relevant, similarity and confusion factors for trademarks). These opinions are **third-party, advisory evidence** that frequently carry significant weight in administrative actions and litigation.

The NIIP Assessment Conclusion constitutes the technical foundation for any trademark enforcement action in Vietnam. The NIIP is a specialized body under the Ministry of Science and Technology (MoST) and holds the status of the **sole authorized organization nationwide** qualified to issue expert opinions on IP infringements.

Given that Vietnamese enforcement authorities often lack deep technical expertise, they are highly unlikely to proceed with an inspection or raid without the confirmation provided by a favorable NIIP conclusion. Thus, securing a positive assessment is paramount for unlocking both the administrative and civil enforcement avenues. Obtaining this conclusion typically requires 20 to 35 working days from the date of submission.

Procedure and Required Documentation for NIIP Submission: The request for assessment must be meticulously prepared, incorporating the strong technical and product evidence collected during the initial investigation phase. Required materials generally include evidence of the alleged infringement, comparative samples of genuine and alleged infringing products, and the certified trademark or design certificate. The petition must clearly articulate the technical claim elements of the trademark and the points of correspondence or difference in the infringing product to guide the NIIP’s analysis effectively.

Please refer to our articles about the Vietnam National Institute of Intellectual Property (NIIP), earlier known as “Vietnam Intellectual Property Research Institute (VIPRI)”.

- In Chinese: [在越南保护您的知识产权——VIPRI服务与专业能力指南](#) (In English: [Protecting your IPR in Vietnam – A Guide to VIPRI’s Services and Expertise](#))
- In Chinese: [在越南评估知识产权侵权：四个关键考量](#) (In English: [Expertise opinions/IP assessment in IPR enforcement proceedings in Vietnam and several notable obstacles](#))
- In Chinese: [NIIP/VIPRI 鉴定结论背后的秘密：五个不可忽视的问题](#) (In English: [The Secret Behind the Assessment Conclusion of VIPRI: 5 Questions That Cannot Be Ignored](#))

10. Strategic roadmap for enforcement

- (i) **Collect and preserve evidence.** Use a bailiff or notary to record online infringements and purchase samples. Request an expert opinion (in form of “Assessment Conclusion”) from the NIIP.
- (ii) **Customs Recordal and Border Measures:** Recording trademarks with Vietnam Customs is an effective way to intercept infringing goods at entry. IPR holders, especially those whose products are likely to be imported or exported, should consider filing a **customs recordal**. The recordal application typically includes details of the trademark, images or descriptions of authorized products, and information to help customs identify suspect goods. Once in place, this system enables Customs to suspend clearance of shipments that appear to contain infringing items, and notify the trademark holder. This strategy is particularly useful for combating imports of counterfeit trademarked products. It essentially sets up an additional surveillance net and can prevent infringing products from flooding the market undetected.
- (iii) **Immediate market clearance:** Utilize the administrative route, particularly through the Ministry of Science and Technology (MoST) Inspectorate, for rapid infringement cessation, market clearance, deterrence, and the creation of official violation records.
- (iv) **Judicial escalation (For damages):** Reserve the civil route only for cases involving high, quantifiable, and provable damages. IPR holders must be prepared for litigation lasting 1 to 2 years or more and must ensure that all foreign documents are fully notarized and legalized prior to filing.
- (v) **Cease-and-Desist Letters and Negotiation:** In some cases, a well-crafted [cease-and-desist letter](#) may resolve an infringement without formal proceedings. This is especially effective if the infringer is a smaller local company that may not be fully aware of the trademark. The letter (usually in Vietnamese, sent through local counsel) should identify the trademark, explain the infringing acts, and

demand that the infringer stop the activity (and possibly compensate for past use). Although not legally required before enforcement, such letters can sometimes lead to an out-of-court settlement or the voluntary halting of infringement. However, one should be cautious: if the infringer denies infringement or refuses, it may be gathering time to prepare defenses. If a cease-and-desist letter is ignored, the trademark owner must be prepared to follow up with formal action; otherwise, idle threats can embolden infringers.

- (vi) **Combining Enforcement Paths:** A strategic approach can involve using multiple enforcement routes in tandem. For example, a trademark owner might first initiate an **administrative raid** to quickly stop the ongoing production of infringing goods and seize evidence. The seized evidence and official record of the violation can then support a **civil lawsuit** for damages. This one-two punch leverages the speed of administrative action and the compensatory relief of court action. Additionally, while a civil case is pending (given it can be lengthy), the trademark owner can keep pressing administratively if new batches of infringement arise, or use **customs measures** to block any import/export. Vietnam's law permits pursuing different remedies concurrently (there is no strict election of remedies requirement), so long as they are not duplicative for the same act. Coordinated use of customs, administrative complaints, and litigation often yields the best outcome – stopping the infringement swiftly and recovering some losses.
- (vii) **Maintain Strong Trademark Portfolio and Validity:** An often overlooked “strategy” is ensuring your own trademarks are robust. In anticipation that an accused infringer will likely challenge the trademark's validity, trademark owners should conduct regular **trademark audits** and be ready to defend the trademark. This includes keeping evidence of the trademark's **registration and maintenance** (to quickly prove you have enforceable rights, as Vietnamese courts will require proof of trademark in force), and perhaps conducting a validity analysis to shore up against obvious prior art attacks. If a trademark is found to have potential validity issues, it might influence the enforcement strategy (for example, relying on administrative action where invalidity cannot be decided, rather than a court case where it could be raised as a defense).
- (viii) **Critical Considerations for IP Risk Management:** The inconsistency stemming from the continued delay in operationalizing the Specialized IP Court in Vietnam emphasizes that, for the near future, IPR holders must rely on exceptionally strong, clearly presented evidence (especially the NIIP “exper opinions”) to guide non-specialized judges. Furthermore, any foreign enterprise accused of infringement should immediately audit the validity of the plaintiff's trademark and prepare an “invalidation” strategy as a core defense mechanism, leveraging the possibility of procedural suspension and retrospective judgment cancellation through the Retrial mechanism.

Conclusion

Vietnam's trademark litigation and IP enforcement system combines administrative, civil, criminal and border measures. While the legal framework provides a range of remedies, enforcement can be challenging due to limited judicial experience, procedural complexities and the need for thorough evidence. Rights-holders should plan a multifaceted strategy: register and maintain trademarks, monitor the market, collect strong evidence, select the suitable enforcement route and prepare for potential defences. With proactive measures and informed legal support, businesses can effectively protect their trademarks in Vietnam's dynamic market.

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