

# ***Trademark Right Protection in Electronic Commerce: Challenges and Countermeasures***

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**Abstract:** As a vital element of core intellectual property for businesses, trademarks play a crucial role in upholding brand image, safeguarding consumer rights, and fostering fair market competition. This paper aims to delve into the challenges encountered in trademark rights protection within e-commerce based on relevant content from trademark law. It further proposes corresponding legal strategies to address these challenges with the goal of promoting sustained and healthy growth within the e-commerce industry. This study uncovers complexities and covert nature associated with trademark infringement activities in e-commerce, as well as widespread cross-border trade infringements and high costs related to evidence collection and rights protection. Corresponding measures to address these issues are then proposed. The research findings underscore the significance of refining laws and regulations, bolstering international cooperation and judicial assistance efforts, intensifying enforcement measures and penalties, as well as establishing robust mechanisms for protecting rights. This paper holds substantial importance in advancing a healthy environment for e-commerce industry development, maintaining equitable competitive market conditions, safeguarding legitimate rights of trademark holders and consumers, and propelling forward intellectual property protection system construction within the realm of e-commerce.

**Keywords:** Electronic commerce, trademark rights, trademark rights protection, trademark infringement.

## **1. Introduction**

In the e-commerce environment, the value of trademarks is more prominent, as they not only symbolize a company's brand image but also serve as an important basis for consumers to identify and select goods or services. However, the characteristics of e-commerce provide fertile ground for trademark infringement.

In previous research, scholars have extensively and comprehensively discussed the protection of trademark rights. On one hand, the focus has been on fundamental aspects of trademark rights. This provides a robust theoretical foundation for understanding trademark rights protection. On the other hand, scholars have also turned their attention to new challenges in protecting trademark rights within this environment. Despite these accomplishments in existing studies, several deficiencies persist. Firstly, there is a lack of systematic and comprehensive analysis regarding specific challenges and strategies for safeguarding trademark rights in e-commerce. Particularly noteworthy is that amidst

globalization trends, existing studies inadequately address discussions on cross-border cooperation and judicial assistance. Secondly, methods employed for infringing trademarks are continuously evolving, while current studies lag behind in addressing these novel forms of violation. Lastly but equally importantly, existing research lacks practical suggestions on how to establish an effective mechanism tailored to the unique characteristics of e-commerce.

Given the existing research gap, this paper aims to construct a comprehensive research framework for trademark rights protection in e-commerce. It will systematically review and analyze the content of protection, challenges, and legal regulatory suggestions.

This study aims to offer theoretical underpinning and practical guidance for safeguarding trademark rights in e-commerce, fostering the healthy development and equitable competition of e-commerce markets. It also aspires to engender heightened awareness and attention across various sectors towards the protection of trademark rights in e-commerce through this study, thereby collectively advancing the enhancement and innovation of the trademark rights protection system.

## **2. The Basic Content of Trademark Right Protection**

In today's increasingly digital marketplace, e-commerce has become a vital channel for businesses to reach customers and drive sales. With the rise of online retail, protecting a brand's identity and reputation in the digital realm has become more important than ever. Trade mark protection plays a crucial role in safeguarding brands against infringement and counterfeiting in the e-commerce landscape. This article will delve into the aspects of trademark rights protection in e-commerce, encompassing the scope of registered trademark protection, infringement of trademark rights, as well as the protection period and renewal of trademark rights, drawing from insights on trademark laws across various countries and regions.

### **2.1. Scope of Protection of Registered Trademarks**

According to the general principles of trademark law, the protection scope of registered trademarks is mainly limited to the registered trademark and the goods or services for which it has been approved for use. This means that the trademark owner has the right to exclusively use its registered trademark on designated goods or services, and has the right to prevent others from using the same or similar trademarks on the same or similar goods or services to avoid confusion among consumers.

At the international treaty or international organization level, both the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights have explicitly defined the scope of trademark protection. They require member countries to provide full protection for registered trademarks and prevent trademark confusion and dilution. For example, Article 6 of the Paris Convention states, the countries of the Union undertake, if their legislation so permits, or at the request of an interested party, to refuse or cancel the registration, and to prohibit the use, of a trademark that constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods [1]. In the realm of e-commerce, the online utilization of trademarks is safeguarded by these international treaties, which grant trademark holders the authority to request network service providers to remove or block infringing content in order to curb infringement. Safeguarding trademarks in the digital sphere necessitates global cooperation and coordination to ensure effective protection for trademark holders worldwide [2]. The trademark owner is entitled to request that the network service provider remove or block the infringing content and prevent the dissemination of infringing activities.

At the national level, each country's legislation provides a precise definition of the scope of trademark protection. For instance, Article 3 of China's Trademark Law explicitly stipulates, trademarks that have been approved and registered by the Trademark Office are considered as registered trademarks, encompassing trademarks for goods, service marks, collective marks, and certification marks; the holders of such trademarks shall possess exclusive rights to utilize them and be legally safeguarded [3]. The Lanham Act in the United States delineates the scope of rights conferred upon trademark registration, encompassing the exclusive right to use the trademark within the registered categories of goods or services. Furthermore, the Trademark Law of the United Kingdom specifies that protection for registered trademarks is confined to approved trademarks and their designated goods or services. Additionally, the Trademark Law of the United Kingdom offers special protection for well-known trademarks, even if they are not registered in the UK, thereby potentially affording them legal safeguarding.

Generally speaking, trademark laws in different countries and international organizations have clear provisions regarding the scope of protection for trademark rights and acts of infringement. These provisions reflect the legal traditions and practical needs of each country in terms of trademark protection.

## **2.2. Expression of Trademark Infringement**

Trademark infringement encompasses a wide range of behaviors, including unauthorized use of registered trademarks, the sale of counterfeit and substandard products that infringe on trademark rights, unauthorized alteration of original packaging or design that infringes on trademark rights, the use of similar or misleading trademarks, forgery or alteration of legal documents or trademark identifiers, domain name hijacking, false advertising, and reverse passing off. These infringements not only damage the legitimate interests of trademark owners but also disrupt the fair competition in the market.

Laws in various countries have detailed provisions regarding the infringement of trademark rights, with the aim of protecting the legitimate interests of trademark owners and maintaining a fair competitive market order. The TRIPs Agreement imposes strict penalties for trademark infringement and requires member states to safeguard the rights of trademark owners through administrative sanctions, civil compensation, and criminal penalties. Additionally, numerous scholars have noted that trademark infringement in the context of electronic commerce is more covert and intricate, necessitating more effective measures for combating and preventing such activities [4].

## **2.3. Term of Protection and Renewal of Trademark Rights**

The protection period of trademark rights is an important aspect of trademark protection. According to the general provisions of trademark laws in various countries, the typical duration for which a trademark right is protected is ten years, calculated from the date of registration approval. Upon expiration, renewal is required to maintain the validity of the trademark right. The trademark owner can apply for renewal before the protection period expires, with no limit on the number of renewals allowed. As long as the trademark owner pays the renewal fee on time and meets all renewal conditions, the trademark right can be protected indefinitely. The specific provisions for renewal, such as the application time, grace period, and renewal fee, vary from country to country and need to be referred to the trademark laws and regulations of each country. The protection period of trademark rights and the renewal system in different countries may be different, but most countries follow similar principles and provisions.

It is worth noting that international treaties such as the TRIPs Agreement have established minimum requirements for the duration of trademark protection, requiring member states to provide

trademark holders with a minimum of ten years of protection. Additionally, these international treaties encourage member states to allow trademark holders to extend the protection period through renewal. According to Art. 18, sentence 1 the term of protection for a trademark is at least seven years, but the Members have the option of allowing unlimited extensions (Art. 18, sentence 2) [5].

In summary, the protection of trademark rights in e-commerce encompasses various aspects, such as the scope of protection for registered trademarks, acts that infringe on trademark rights, and the duration and renewal of trademark protection. Through the combined efforts of national trademark laws, international organizations, and international treaties, trademark owners are able to fully exercise their rights and safeguard their legitimate interests.

### **3. Challenges of Trademark Protection in Electronic Commerce**

In the rapidly evolving landscape of e-commerce, numerous new characteristics have emerged in comparison to traditional markets. These characteristics will present unprecedented challenges for trademark rights protection. Consumers are frequently challenged to discriminate between the brand they are looking for and a look-alike product. This can be difficult, especially in an online environment where information is more complex and counterfeit, and when the look-alike product has things in common with the sought-for brand. In the following analysis, we will delve into three aspects: the covert and complex nature of infringement activities in e-commerce, the prevalence of cross-border infringements, and the escalating costs associated with evidence collection and rights protection.

#### **3.1. The Concealment and Complexity of Infringement**

In the e-commerce environment, trademark infringement has become more covert and complex, involving issues such as anonymous and false identities, the use of technical means to conceal infringement, diverse forms of infringement, and differences in the application of laws. These factors have caused significant challenges for trademark owners.

**Anonymity and False Identities:** In the realm of electronic commerce platforms, infringers frequently employ anonymous or fictitious identities to register shops and vend goods that violate trademark rights. If an internationally renowned fashion brand were to discover a multitude of counterfeit stores utilizing its brand name and trademark across various cross-border e-commerce platforms, it would prove challenging to trace the actual operators behind these establishments.

**Technological Concealment Methods:** Infringers also utilize technological means to obfuscate their genuine IP addresses and geographic locations, rendering it arduous for rights holders to directly pinpoint the source of infringement.

**Diverse forms of infringement:** Trademark infringement in e-commerce encompasses not only the direct sale of counterfeit goods, but also extends to the use of identical or similar trademarks in advertising, product descriptions, domain name registration, and other related activities [6]. In the era of information technology development, trademark counterfeiting is becoming increasingly subtle and sophisticated. Trademark pirates are growing more subtle and refined. They proceed circumspectly, by suggestion and approximation, rather than by direct and exact duplication of their victims' wares and marks [7].

**Differences in Legal Application:** The legal systems governing trademarks vary across different countries and regions, leading to complexity in the determination and handling of cross-border infringement cases. For instance, if a European brand identifies infringement on a Chinese e-commerce platform, it must navigate regulations and procedures that differ from those of its home country when seeking redress under Chinese law.

The right to a trademark is territorial in nature (protected only in the country or region where the trademark is registered or used), while the reach of the internet is global. This has posed challenges in resolving legal disputes between individuals or companies with identical or similar trademarks across different jurisdictions, leading to potential confusion among similar goods or services in various countries [8].

### **3.2. The Universality of Transnational Infringement**

With the rise of cross-border e-commerce, transnational trademark infringement has become increasingly common. Infringers exploit the borderless nature of the internet to sell counterfeit products bearing trademarks worldwide [9]. Their trademark infringement often spans multiple countries and regions, making enforcement more challenging. The infringed brands are typically globally renowned, but their trademarks are misappropriated by infringers in multiple countries and marketed as counterfeit products on various cross-border e-commerce platforms. These infringing products not only harm brand reputation but also significantly diminish the market share of genuine products.

The right to a trademark is territorial in nature (protected only in the country or region where the trademark is registered or used), while the reach of the internet is global. This thing creates problems in solving litigations among persons or companies who legally own identical or similar trademarks to the point of confusion for similar goods or services in different countries [8].

### **3.3. Increasing Costs of Evidence Collection and Advocacy**

In e-commerce, evidence of infringement often exists in the form of electronic data, making it difficult to collect and resulting in high costs for rights protection.

In terms of the difficulty of evidence collection: (1) Electronic evidence is inherently transient: transaction records, promotional materials, and other documents in e-commerce are predominantly stored as electronic data, making them susceptible to tampering or deletion. Therefore, in the process of safeguarding rights, it is imperative for the rights holder to promptly secure and preserve relevant evidence to prevent its loss. (2) Challenges in cross-border evidence gathering: in cases of transnational trademark infringement, rights holders must gather evidence across different countries and regions. This not only heightens the complexity and cost of evidence collection but also introduces potential legal obstacles and procedural conflicts.

In terms of the cost of safeguarding rights: (1) Legal procedures are intricate: Cross-border trademark infringement cases often involve legal proceedings in multiple countries and regions, requiring rights holders to be familiar with and adapt to the legal provisions and judicial procedures of different countries. This increases the complexity and time cost of safeguarding rights. (2) High economic costs: The expenses incurred during the process of safeguarding rights, such as legal fees, litigation costs, and investigation expenses, are often substantial. For small and medium-sized enterprises, these high costs may lead them to hesitate or even give up on pursuing their rights.

## **4. Suggestions on Legal Regulation of Trademark Right in Electronic**

### **4.1. The Improvement of International Trademark Laws and Regulations**

First and foremost, we need to establish the criteria for determining cross-border infringement, considering that the transborder nature of the Internet may facilitate interjurisdictional competition and innovation in copyright incentives [10]. It is imperative for countries to collaborate in order to clearly define the standards for identifying trademark infringement in the context of electronic



commerce at an international level. This entails delineating core concepts such as "similar goods" and "identical or similar trademarks", thereby ensuring uniformity and predictability on a global scale.

Furthermore, it is crucial to strengthen legal revisions and coordination. With the development of e-commerce, the trademark infringement cases are more often than before, which brought new problems to the law of trademark protection.

There are international and domestic laws and conventions to protect trademarks, but further elaboration is necessary while dealing with these new problems [11]. Countries should refer to international conventions such as the Paris Convention and the Madrid Agreement, and revise and improve their national trademark laws in light of the new features of e-commerce. At the same time, they should strengthen legal coordination through multilateral or bilateral agreements to reduce legal conflicts and promote the unification of the global trademark protection system. The international protection of intellectual property requires that countries coordinate their systems to ensure a balance between international and domestic aspects of intellectual property rights.

#### **4.2. Strengthening of Transnational Cooperation and Judicial Assistance**

In the context of enhancing cross-border collaboration, it is essential to drive the establishment of a mechanism for international cooperation in trademark protection. This involves strengthening information exchange and coordination among national trademark regulatory authorities, law enforcement agencies, and judicial institutions. Through avenues such as regular meetings and joint initiatives, collaborative efforts should be intensified to collectively address instances of cross-border trademark infringement.

Additionally, in promoting judicial assistance, there is a need to bolster international legal cooperation encompassing evidence gathering, document delivery, recognition of judgments, and enforcement. The aim is to ensure that trademark rights holders can access timely and effective legal remedies in cross-border litigation.

#### **4.3. The Enhancement of Law Enforcement and Supervision**

From a law enforcement perspective, it is imperative for countries to enhance the enforcement of trademark infringement laws, particularly in cases involving violations facilitated through electronic commerce platforms. This is essential to upholding the authority and efficacy of the law [12]. By implementing a rapid response mechanism, bolstering online monitoring and investigation, and enhancing evidence collection capabilities, we can enhance the efficacy of our efforts to combat trademark infringement. From a regulatory standpoint, it is imperative to delineate the responsibilities and obligations of e-commerce platforms in safeguarding trademark rights. This entails mandating the establishment of robust mechanisms for processing complaints related to trademark infringement, expeditious removal of infringing products, and collaboration with law enforcement agencies in investigations and evidence gathering. Stringent penalties should be enforced against e-commerce platforms that neglect their duties in protecting trademark rights. Furthermore, leveraging advanced technological tools in the information age enables real-time monitoring of global e-commerce platforms to promptly detect instances of trademark infringement.

#### **4.4. Establishment and Improvement of International Rights Protection Mechanism**

Currently, in the realm of transnational litigation, it is imperative to initiate trademark infringement lawsuits across multiple jurisdictions, compelling infringers to cease their violations and provide restitution for damages. Concurrently, proactive engagement with local law enforcement agencies and legal teams is essential to navigate legal variances and procedural conflicts.

Looking ahead, our primary focus for rights protection lies in establishing an expeditious international rights protection framework that offers streamlined cross-border avenues for trademark owners. This entails the establishment of dedicated rights protection entities, simplification of rights protection procedures, and acceleration of processing timelines.

Furthermore, it is crucial to underscore the need for providing legal aid and training support to small and medium-sized enterprises as well as underdeveloped countries. This assistance aims to enhance their comprehension and application of international trademark laws while bolstering their self-protection capabilities.

#### **4.5. Promotion of Global Trademark Information Sharing and Mutual Recognition**

**Strengthening brand promotion and education:** Utilize official channels to issue statements and announcements on intellectual property rights protection, aiming to improve consumers' ability to recognize counterfeit products. Simultaneously, strengthen collaboration with local governments and industry associations to collectively combat trademark infringement.

**Improving the trademark registration system:** By allowing a trader to obtain protection for a mark in a number of countries simultaneously, trade mark registration aids the transnational marketing of goods to facilitate global sharing and mutual recognition of trademark information. This will contribute to reducing duplicate registrations and malicious trademark squatting, as well as enhancing the efficiency of trademark registration and management.

**Enhancing the establishment of databases:** Countries should enhance the construction and maintenance of trademark databases to ensure the accuracy and completeness of trademark information. Simultaneously, efforts should be made to promote the establishment of an international alliance for trademark databases, facilitating global interconnection and interoperability of trademark information.

In summary, from an international standpoint, enhancing the legal regulation of trademark rights in e-commerce necessitates concerted efforts from governments, international organizations, e-commerce platforms, and trademark holders. This can be accomplished through measures such as refining legal frameworks, strengthening cross-border cooperation, bolstering enforcement and regulatory capabilities, establishing robust mechanisms for safeguarding rights, and promoting global sharing and mutual recognition of trademark information. These actions collectively contribute to fostering a more equitable, well-ordered, and efficient e-commerce market environment.

### **5. Conclusion**

The global wave of e-commerce has not only facilitated the circulation of goods and services, but has also significantly transformed the landscape of trademark rights protection. Faced with the increasingly complex and dynamic challenges in this field, this study provides a comprehensive analysis of the difficulties surrounding trademark rights protection in the e-commerce environment, and subsequently develops a multi-dimensional legal regulatory framework. In the virtual realm of e-commerce, trademark infringement is difficult to detect due to its high level of concealment and rapid technological advancements. Additionally, the prevalence of cross-border infringement presents unprecedented challenges for trademark owners seeking to enforce their rights. The fragility of electronic evidence, complexities associated with cross-border evidence collection, and substantial costs involved in enforcement further exacerbate the gravity of this issue.

In response to these challenges, this article proposes several innovative suggestions for the construction of a more comprehensive international trademark legal framework. Simultaneously, it emphasizes the importance of strengthening cross-border cooperation and judicial assistance mechanisms. Additionally, this article highlights the significance of enhancing law enforcement and

supervision efforts by calling on countries to intensify their actions against trademark infringement. It also stresses the need to clarify the responsibilities and obligations of e-commerce platforms in protecting trademark rights. Finally, promoting global sharing and mutual recognition of trademark information is identified as an essential goal. In conclusion, safeguarding trademark rights in e-commerce is a protracted and formidable undertaking that demands concerted global efforts and sustained innovation. We also anticipate the eventual establishment of a more robust, well-regulated, and dynamic e-commerce market environment.

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