



# Anti-counterfeiting and Online Brand Enforcement: Global Guide

2024

**Responding to online counterfeiters  
within the context of social media in  
China**

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# Responding to online counterfeiters within the context of social media in China

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## Summary

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As all successful businesses will agree, one of the most important factors in that success is bringing products to the attention of potential consumers. A brand relies upon consumers who provide revenue and positive publicity, which serves to generate more revenue. This in turn enables the expansion of the business by way of income and recognition.

However, such success creates its own problems, attracting infringers who seek to capitalise on the popular brand by using its name to sell their own, often inferior, products. The global problem of counterfeiting has proliferated over the past few years, assisted by changes in international consumer shopping habits that – especially since the Covid 19 pandemic – have accelerated digitalisation, reduced reliance on bricks-and-mortar shopping destinations and pushed businesses and consumers online. A further shift has now taken place, with an increasing number of sales being made via social media, where brands use live streaming or influencers to promote their products. Social media is now the new e-commerce marketplace, requiring a suitable and immediate response to increasing intellectual property (IP) infringement.

## **BACKGROUND**

Social media marketing has become one of the most significant growth paths for many businesses in the current economic climate. More than 4.60 billion people are active Internet users around the world, accounting for 59.5% of the world population. In 2022 there were 4.32 billion mobile Internet users, of whom 4.2 billion were active users of social media platforms.<sup>[1]</sup> In China, Western social media platforms are not officially permitted, so X (formerly known as Twitter), Facebook and YouTube are replaced by China's own social media. Various platforms include WeChat, which had 1.26 billion monthly active users, Little Red Book (XioHongShu, also known as Chinese Instagram) had 200 million monthly active users, Douyin (Chinese TikTok) had 800 million active monthly users and Youku (Chinese YouTube) had 500 million.<sup>[2]</sup> These figures provide some context to the importance of social media as a way of attracting and retaining customers.

Social media has been described as 'a group of internet based applications that build on the ideological and technical foundations of Web 2.0 and that allow the creation and exchange of user-generated content'.<sup>[3]</sup> There are many benefits to social media, which may be used by businesses to reach out to customers and extend the awareness of the brand, and to influence the behaviour of their customers. Consumers can also provide the business with feedback, which can result in the provision of improved products and services, creating an environment whereby the relationship between buyer and seller is enhanced. The buyer feels empowered by the interaction and a media-savvy seller can harness this positivity to gain a competitive advantage in the market.

## **E-COMMERCE IN SOUTHEAST ASIA**

Yihan notes that a new era in China's economy started with the growth of the e-commerce market, which accounted for more than 38% of the country's GDP by 2020. In 2021, China accounted for more than 50% of worldwide e-commerce retail sales, surpassing Europe and the United States combined.<sup>[4]</sup> It is not surprising that businesses see the great potential of social media platforms. With increased commercial potential comes the increased possibility of IP infringement, and businesses will need to raise their game to protect their interests and the value of their brand.

Southeast Asia has sought to address the threats from counterfeiting through online sales. In Vietnam, for example, many brands pay to advertise their products in a way that encompasses the widest audience, such as using Facebook, YouTube, Tik Tok or the messaging app Zalo, and live streaming is used to present products to consumers in a way that encourages a swift purchase. In 2020, the Vietnam National Market Surveillance Agency undertook a high number of raids and seized fake products bound for the online market.<sup>[5]</sup> Prior to this development, in December 2019, Vietnam's Ministry of Industry and Trade launched a portal<sup>[6]</sup> to deal with e-commerce disputes and counterfeits. This enabled both individuals and businesses to report infringing activities. Thereafter, the relevant agencies<sup>[7]</sup> work together to settle the case and inform the complainant of the result.<sup>[8]</sup>

## LEGISLATIVE RESPONSES

In addition to the portal, a new e-commerce decree in Vietnam will restrict the sales of fake goods on e-commerce platforms and monitor online trading activities.<sup>[9]</sup> The burden will be on the e-commerce platform operators to be proactive in preventing prohibited goods and services from appearing on platforms and to remove them within 24 hours of receiving a request to do so from the relevant agencies, as well as cooperating with right holders to take down infringing content or products.<sup>[10]</sup>

China has similarly responded to the e-commerce boom by enacting the E-Commerce Law of the People's Republic of China (the E-Commerce Law), effective from 1 January 2019.<sup>[11]</sup> The objective of this legislation is to regulate the proliferating e-commerce business model while also provide consumer protection. The new legislation classifies three types of business operators that fall within the scope of the law: e-commerce operators,<sup>[12]</sup> platform operators<sup>[13]</sup> and e-commerce operators on platforms. An example of an e-commerce operator – who can be a natural person, an incorporated entity or an incorporated association – is a seller providing goods via a social media platform such as WeChat. A platform operator, meanwhile, provides an online platform, for businesses providing the goods or services. Finally, e-commerce operators on platforms are third-party businesses selling goods or services on e-commerce platforms.

The legislation defines e-commerce as all business activities conducted on an information network to sell commodities or offer services within China, with the exceptions of certain items, including financial products or services or services relating to news stories.<sup>[14]</sup> The E-Commerce Law imposes a legal requirement for business registration on all e-commerce operators, who must now operate as legal business entities, adhering to the relevant business laws and administrative regulations required to conduct business throughout China, to obtain a business licence, subject to any legal exclusion, and to fulfil any tax obligations.

The new legislation also imposes liabilities on e-commerce platforms, who are responsible for ensuring that they provide open, fair and just services to third-party businesses who operate on their platforms. There is a duty upon the platforms to provide transparent service agreements and rules and to give prominent notification of any proposed changes to the service agreement and rules, at least seven days before they are implemented.<sup>[15]</sup> A further obligation is placed upon the platforms to verify and identify the third-party businesses operating upon them. The obligation includes the submission of the tax and business identification of the third party, to the Department of Market Regulation. Where a business continues to be unregistered while operating from the platform, it is incumbent

upon the platform to issue them with a warning to register and to report any violations to the appropriate Government department.

One concept of the E-Commerce Law is the provision of information for consumers, who are entitled to a right to know and a right of choice. Any information relating to commodities or services must be disclosed in a comprehensive, accurate and timely manner. False or misleading information relating to, for example, fictitious deals or untrue consumer comments, is forbidden.<sup>[16]</sup> Genuine comments made by consumers concerning goods or services provided by an e-commerce operator on platforms may not be deleted.<sup>[17]</sup>

As e-commerce has expanded, incidents of IP rights infringement have also proliferated. Under the E-Commerce Law, it is the operator of the e-commerce platform who is responsible for managing IP infringement, and they may be jointly liable with the infringer for damages if, on receipt of a Notice of Intellectual Property Infringement, they fail to forward this to the e-commerce operator. This is also the case where the platform fails to take appropriate measures to stop the infringement, such as deleting or blocking the relevant information, disabling relevant links and terminating transactions or services.<sup>[18]</sup>

A further new concept can be found in Article 38 of China's E-Commerce Law, which regulates the platform operators' obligations and liabilities concerning product safety. The Article introduces two categories of obligations: the verification obligation and the safety obligation. Under Article 38, a consumer who suffers damage from any product purchased on the platform may now seek compensation from the platform operator who breached one of its obligations under that Article. Article 38(1) provides that an e-commerce platform operator will be jointly and severally held liable with the violating sellers on its platform if it knows or should know about the infringement and fails to take necessary measures to safeguard personal or property safety. Article 38(2) provides that an e-commerce platform operator that fails to fulfil their obligations, such as failing to examine the administrative licensing certificate of sellers, or failing to protect customers' safety, resulting in consumer damage, will carry the resulting liability. Platform operators in breach of these obligations may face an administrative penalty under Article 83, as well as liability under Article 38.<sup>[19]</sup> The obligations placed upon the platform operators are to verify the seller's identity information, to verify the seller's Administrative Licensing Certificates and to review the product information.

The Article 38 provisions have implications for IP infringement because fake goods in certain product markets are more likely to cause damage or injury than good quality original ones. However, it is unclear from Article 38 how a determination can be made that the platform has fulfilled its verification obligations and the depth to which such verifications must go. Future amendments to the E-Commerce Law should provide specificity about the extent of verifications, especially in relation to the product information. There is a causative effect between the quality of the platform operators' verification and any damage caused by a defective or fake product. Medical or electrical products are especially vulnerable in this respect.

While platform operators are responsible for monitoring and preventing infringements, sellers may be jointly liable for damage. This is a risk not only a risk to their financial well-being but also to their reputation. Even where a brand has no involvement in, or knowledge of, sales made from an infringing seller on a platform, the potential negative publicity may be very damaging. Brands should consider the new E-Commerce Law and ensure that they can produce good quality documentation that sets out their identity,

Administrative Licensing Certificates and product information. This is an area that IP lawyers will no doubt encounter in the next few years as the E-Commerce Law becomes more widely recognised by consumers and sellers.

The new E-Commerce Law is a step in the right direction for reducing and preventing IP infringement in a social media environment. However, IP rights holders must help themselves and be proactive in addressing this issue. They should take advice from experienced IP lawyers at the outset and ensure that they have registered their rights and have in place an appropriate anti-counterfeiting strategy to protect their IP portfolios. Such strategies should include regular monitoring of e-commerce and social media platforms so that infringing material can be detected and the most appropriate legal route can initially be taken by their lawyers, such as the issuing of takedown notices, cease and desist letters sent to the infringer, and notices provided to the relevant authorities so that they can remove the infringing material or start the most appropriate civil or criminal action.

## CONCLUSION

Regulations with respect to social media as the new e-commerce marketplace are still in their infancy. It can be expected that China will expend a great deal of time and effort in regulating these over the next few years, with IP legislation becoming increasingly focused on it in the same way that bad faith in trademark applications was the focal point for new law from 2013 onwards. Consumers' rights will be the focus of the e-commerce marketplace: brands will be well advised to be proactive from the outset to ensure that their IP portfolio includes good quality verification documentation in relation to their identity, product details and licensing certification. Social media provides access to a wide audience of potential buyers as well as a wide range of potential infringers, whose activities require an 'e-mediate' response.

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## ENDNOTES

[1] Statista (2022), Global digital population as of January 2021, available online at: <http://www.statista.com/statistics/617136/digital-population-worldwide> (accessed 26 March 2024).

[2] Gentlemen Marketing Agency (2022), A guide to most popular Chinese social media sites & platforms for marketing, available online at: <http://marketingtochina.com/top-10-social-media-in-china-for-marketing/> (accessed 26 March 2024).

[3] A. M. Kaplan and M. Haenlein, 'Users of the world unite! The challenges and opportunities of social media', *Bus. Horiz.* 53 (2010): 59–68, doi:10.1016/j.bushor.2009.09.003; Muhammad Sohaib, Asif Ali Safeer and Abdul Majeed, 'Role of social media marketing activities in China's e-commerce industry: A stimulus organism response theory context', *Front Psychol.* (2022): 5:13: 941058.

[4] Yihan Ma, E-commerce in China: Statistics and facts, available online at [http://www.statista.com/topics/1007/e-commerce-in-china/#topicHeader\\_wrappe](http://www.statista.com/topics/1007/e-commerce-in-china/#topicHeader_wrappe) (2022) (accessed 5 April 2024).

[5] European Commission, 'Intellectual property protection in the e-commerce era: What has changed recently in South-East Asia?', Intellectual Property Helpdesk, 17 February 2021, available online at: [Intellectual-property-helpdesk.ec.europa.eu](https://intellectual-property-helpdesk.ec.europa.eu) (accessed 8 April 2024).

[6] <http://chonghanggia.online.gov.vn>.

[7] Relevant agencies include the e-Commerce and Digital Economy Agency, the Market Surveillance, Competition and Consumer Authority, and the Department of Industry and Trade.

[8] See European Commission, 'Intellectual property protection in the e-commerce era', n. 5.

[9] <http://www.vir.com.vn/new-draft-decree-tackles-e-commerce-drawbacks-77>.

[10] Ibid.

[11] The E-Commerce Law of the People's Republic of China, enacted on 31 August 2018, effective from 1 January 2019.

[12] Ibid., n. 11, Section 2, Art. 9–26.

[13] Ibid., Section 2, Art. 27–46.

[14] Ibid., Art. 2.

[15] Ibid., Art. 34.

[16] Ibid., Article 17.

[17] Ibid., Article 39.

[18] Ibid., Chapter VI, Legal Liabilities, Art. 74–88.

[19] Under the E-Commerce Law, Art. 38, where an e-commerce platform business fails to take the necessary measures, though it knows or should have known that an in-platform business sells commodities, or provides services inconsistent with the requirements for guaranteeing personal and property safety, or commits any other conduct of infringing upon the lawful rights and interests of consumers, the e-commerce platform business and the in-platform business shall be jointly and severally liable. If, in respect of commodities or services relative to the life and health of consumers, an e-commerce platform business causes damage to a consumer by its failure to perform the obligation of reviewing the qualifications of an in-platform business, or the obligation of guaranteeing the safety of consumers, the e-commerce platform business shall be correspondingly liable in accordance with the law.





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