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Digital Identity Theft and Online Trademark Fraud in India: Rethinking Cyber Governance at the Intersection of Technology and Intellectual Property

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ABSTRACT

The proliferation of electronic trade in India has changed the notion of commercial identification. Domain names, social networking profiles, electronic store fronts, and electronic identities have become essential factors in verifying legitimacy and origin. Any abuse of such electronic identifications constitutes not only cyber-fraud but also trademark violations. Nevertheless, Indian laws cover these crimes in isolation, namely, under the Information Technology Act, 2000 and the Trade Marks Act, 1999. This paper explores the relationship between digital identity fraud and electronic trademark violation, reviewing the statutes, jurisprudence, and policy considerations, and making recommendations for a unified regulation of digital markets.

INTRODUCTION

The transition to a digital economy in India has radically changed the definition of business identity. In conventional times, trademarks were used on products, their packaging, or shops in order to differentiate business entities and ensure quality in products. Now, business identity is created by way of websites, domain names, social media profiles, and e-commerce portals. Digital identifiers serve the same purpose of source identification as did conventional trademarks. In most cases, customers take the appearance at face value in the absence of authentication. It has become very easy for fraudsters to create identical copies of trademarks, mimic websites or use domain names similar to those used by the trademark owner.

The reason why digital impersonation is complicated by nature is due to the fact that it cuts across various types of laws. For example, when someone sets up a replica of a website of a well-known brand name, this may constitute identity theft from the perspective of cyber law, while also constituting an offense against the trademarks according to intellectual property law. Nevertheless, in India, these offenses have been legislated separately. The Information Technology Act is concerned more with cybercrimes, while the Trade Marks Act focuses on brand and proprietary identity. It is this disconnection which leaves India lagging behind in its cyber governance system.

STATUTORY FRAMEWORK

INFORMATION TECHNOLOGY ACT, 2000

IT Act, 2000 is an Act which governs electronic transactions and cyber offenses. While not intended for trademark issues, there are certain sections which deal with digital impersonation. Section 43 provides civil damages for accessing or copying any data without consent, whereas Section 66 deals with such acts committed dishonestly or fraudulently. Sections 66C and 66D deal with identity theft and cheating by personation through computer resources respectively, mostly in phishing and fraud related matters. Section 72A deals with unauthorized disclosure of personal information, while Section 79 gives immunity to intermediaries after due diligence process. The IT Act basically deals with criminal liability and fails to provide adequate protection to brand rights.

TRADEMARKS ACT,1999

The Trade Marks Act, 1999 grants statutory protection to registered trademarks and preserves common law remedies. Section 2(1)(zb) defines a trademark as a mark capable of distinguishing goods or services. Section 28 grants exclusive rights to the registered proprietor. Section 29 elaborates on infringement, particularly where use of a mark is likely to cause confusion or deception. Section 27 preserves the remedy of passing off even in the absence of registration. Sections 134 and 135 govern jurisdiction and remedies, including injunctions and damages.

The Act uses technologically neutral language. However, the Act fails to provide any specific reference to the use of digital identifiers such as social media profiles and domain names. The

Courts, therefore, have widened the interpretation of the Act in order to deal with online misuse.

JUDICIAL DEVELOPMENT IN THE LEGAL CONTEXT

Indian courts have gradually shaped the application of trademark law to cyberspace. The Delhi High Court recognised that domain names can function in a manner similar to trademarks. The Court held that deceptive similarity in domain names could mislead internet users and granted injunctive relief on the basis of passing off[1].

The Supreme Court further clarified this position by observing that domain names possess commercial value and merit legal protection. The Court acknowledged that online consumers often rely on domain names as indicators of source and legitimacy[2].

The Delhi High Court restrained the defendant from registering multiple domain names incorporating the well-known “TATA” mark. The judgment recognised cybersquatting as a form of bad-faith exploitation of trademark goodwill[3].

Judicial scrutiny has also extended to intermediary responsibility. The Delhi High Court examined whether an online platform could claim immunity under Section 79 of the IT Act while actively facilitating the sale of infringing goods[4]. The Court concluded that platforms exercising significant control over listings could lose safe-harbour protection. The Court further clarified the obligations of intermediaries in responding to takedown requests.[5]

Although these cases demonstrate doctrinal adaptability, they also reveal reliance on judicial interpretation rather than comprehensive legislative reform.

GOVERNANCE CHALLENGES

Overlapping of law of cyber-crime and law of intellectual property raises procedural difficulties in dealing with cases of digital impersonation. The firm may have to enforce the remedy available under the Information Technology Act as well as the remedy against any

[1] *Yahoo! Inc. v. Akash Arora*
[2] *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd*
[3] *Tata Sons Ltd. v. Manu Kosuri*
[4] *Christian Louboutin SAS v. Nakul Bajaj*
[5] *Kent RO Systems Ltd. v. Amit Kotak*

infringement of its trademark. This involves huge expenditure and time as there arise issues pertaining to jurisdiction, as the sites are not within India and the identity of the person can be masked. Intermediary's help is required for enforcement. Moreover, the interpretation of the ambit of section 79 of IT Act is pending in the courts due to lack of statutory guidelines.

RECENT REGULATORY CONTEXT

These regulations imposed greater responsibilities on the intermediaries with respect to due diligence measures such as providing grievance redressal mechanisms and timelines within which any material that is considered unlawful would be taken down. Although these regulations have improved accountability, they are silent on issues related to enforcing trademarks within the digital marketplace. Furthermore, there are certain obligations that India must fulfill under the TRIPS Agreement in order to protect and enforce its intellectual property laws.

CONCLUSION

The growth of digital theft of identity and trademark fraud is indicative of the new-age complexities involved in commerce. While the Information Technology Act, 2000 addresses issues relating to cyber-crimes and the Trade Marks Act, 1999 protects trademarks, their distinct regulatory frameworks hinder any effort to combat both threats in a digital setting. The courts have tried filling the void through judicial interpretations; however, what is needed in the longer term is a coordinated effort towards legal and regulatory change. As India transitions to becoming a digitally-driven economy, it needs a comprehensive regulatory approach that brings together technology and intellectual property laws for protecting commercial identities.

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