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TRADEMARK INFRINGEMENT BY E-COMMERCE PLATFORMS IN INDIA: EXAMINING INTERMEDIARY LIABILITY AND BRAND PROTECTION

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ABSTRACT

The fast-growing e-commerce industry has significantly changed the way retail operates in India, allowing businesses to connect with customers from different regions. Although digital platforms have created more business opportunities, they have also made it easier for fake and unauthorized products to spread. The role of online marketplaces like Amazon, Flipkart, and other digital platforms has made it harder to determine who is responsible when trademark violations occur. Indian laws aim to achieve two main goals: promoting innovation by protecting online platforms and ensuring that trademark holders are not exploited without permission.

This article explores the legal rules that apply to the responsibility of intermediaries under the Trade Marks Act, 1999 and the Information Technology Act, 2000, with a focus on court rulings related to e-commerce. It looks at important court decisions, assesses how well the current legal system works, and argues that while it is important to provide protection to online businesses, these platforms should not be shielded if they actively support or benefit from trademark violations.

The article ends by suggesting better ways for platforms to check on the authenticity of products, more effective processes for removing illegal items, and closer collaboration between brand owners and online platforms. It also stresses the need for greater responsibility from intermediaries to protect customers and build trust in India's growing digital market.

Keywords: *Trademark infringement, E-commerce, Intermediary liability, Safe harbour, Counterfeit goods, Brand protection.*

INTRODUCTION

Electronic commerce has fundamentally reshaped the manner in which goods and services are bought and sold in India. The increasing reliance on online marketplaces has created unprecedented opportunities for businesses to expand their consumer base while providing customers with greater convenience and product diversity. However, the same technological infrastructure has also enabled counterfeiters to exploit digital platforms for marketing and distributing trademark-infringing products on a large scale.[1]

Unlike conventional retail transactions, e-commerce platforms function as intermediaries connecting independent sellers with consumers. This unique business model raises an important legal question: **To what extent should an online marketplace be held liable for trademark infringement committed by third-party sellers?** The answer has significant implications for intellectual property protection, consumer welfare, and the growth of India's digital economy.[2]

Trademark infringement in online marketplaces differs from traditional infringement because counterfeit goods can be listed, sold, and removed within hours, making enforcement considerably more difficult. Additionally, platforms often benefit economically through commissions, advertising services, and logistics support while claiming immunity under intermediary liability provisions.[3]

Indian courts have increasingly addressed this conflict by interpreting the relationship between the **Trade Marks Act, 1999**, the **Information Technology Act, 2000**, and the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**. Judicial decisions demonstrate a gradual movement towards imposing greater responsibilities upon intermediaries that exercise significant control over marketplace operations.[4]

This article critically examines India's legal framework governing intermediary liability for trademark infringement, assesses the emerging judicial trends, and suggests measures to strengthen brand protection while preserving digital innovation.

TRADEMARK PROTECTION AND INTERMEDIARY LIABILITY: THE LEGAL FRAMEWORK

Trademark law seeks to protect the commercial identity and goodwill associated with a brand by granting exclusive rights to registered proprietors. In India, the **Trade Marks Act, 1999** provides the principal legal

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[1] Organisation for Economic Co-operation and Development (OECD), *Misuse of E-Commerce for Trade in Counterfeits* 11–19 (2021)

[2] Information Technology Act, No. 21 of 2000, § 79 (India)
[3] Trade Marks Act, No. 47 of 1999, § 29 (India); Information Technology Act, No. 21 of 2000, § 79 (India)
[4] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215; Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India.

framework governing trademark registration, protection, and enforcement. Section 28 confers upon the registered proprietor the exclusive right to use the trademark in relation to the goods or services for which it is registered, while Section 29 defines the circumstances constituting trademark infringement. These provisions are intended to prevent unauthorized use of identical or deceptively similar marks that may mislead consumers or dilute the reputation of a brand.[5]

The emergence of e-commerce marketplaces has complicated the traditional understanding of trademark infringement. Unlike conventional retailers, online platforms generally do not manufacture or directly sell products; instead, they facilitate transactions between independent sellers and consumers. This intermediary-based business model raises complex questions regarding the extent to which such platforms should bear responsibility for infringing activities carried out by third-party sellers.[6]

The liability of digital intermediaries is primarily governed by **Section 79 of the Information Technology Act, 2000**, which grants conditional safe harbour protection to intermediaries for third-party information hosted on their platforms. The immunity, however, is not absolute. An intermediary loses the benefit of Section 79 where it actively participates in unlawful activities, conspires in the commission of an offence, or fails to comply with lawful directions requiring the removal of infringing content. Consequently, the availability of safe harbour depends upon the intermediary maintaining a neutral role and exercising the due diligence prescribed under law.[7]

The regulatory framework has been further strengthened by the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**, which impose obligations relating to due diligence, grievance redressal, removal of unlawful content, and cooperation with governmental authorities. Although these Rules do not specifically regulate trademark infringement, they reinforce the responsibility of online platforms to respond promptly to complaints involving counterfeit or infringing products. Together, these statutory provisions establish the legal foundation upon which Indian courts assess intermediary liability in trademark disputes.[8]

JUDICIAL INTERPRETATION OF INTERMEDIARY LIABILITY

The scope of intermediary liability in trademark disputes has been significantly shaped by judicial interpretation. Indian courts have consistently held that the safe harbour protection available under Section 79

[5] Trade Marks Act, No. 47 of 1999, §§ 28–29 (India)
[6] Trade Marks Act, No. 47 of 1999, § 29 (India); Information Technology Act, No. 21 of 2000, § 79 (India)
[7] Information Technology Act, No. 21 of 2000, § 79 (India).
[8] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India.

of the Information Technology Act, 2000 is not unconditional. Rather than relying solely on an intermediary's contractual status, courts examine the nature and extent of its involvement in facilitating online transactions.

A landmark decision in this regard is *Christian Louboutin SAS v. Nakul Bajaj*, where the Delhi High Court held that an e-commerce platform actively promoting, advertising, or facilitating the sale of infringing goods cannot automatically claim immunity as a passive intermediary. The Court observed that platforms exercising substantial control over product listings, marketing, or fulfilment services may lose the benefit of safe harbour protection and be held liable for trademark infringement.[9]

Similarly, in *Amway India Enterprises Pvt. Ltd. v. 1MG Technologies Pvt. Ltd.*, the Delhi High Court emphasized that online marketplaces are expected to exercise reasonable due diligence while allowing third-party sellers to operate on their platforms. The decision highlighted that intermediary protection should not become a shield for platforms that knowingly enable the sale of counterfeit or unauthorized products.[10]

Accordingly, Indian courts have begun to focus more on how intermediaries actually behave rather than simply relying on their official titles or labels.

CHALLENGES IN BRAND PROTECTION ON E-COMMERCE PLATFORMS

The exponential growth of e-commerce has significantly intensified the challenges associated with trademark enforcement. Unlike traditional retail markets, online marketplaces enable sellers to list products anonymously and reach a nationwide consumer base with minimal regulatory oversight. This environment has facilitated the widespread circulation of counterfeit and trademark-infringing goods, often making enforcement against individual sellers difficult. The ease with which infringing listings can be created, removed, and re-uploaded further complicates the efforts of trademark proprietors to protect their brands.[11]

Another major challenge is the difficulty in identifying the actual infringers. Many online sellers operate using incomplete or inaccurate identification details, making legal proceedings costly and time-consuming. While intermediary platforms maintain seller databases, trademark owners frequently encounter delays in obtaining relevant information necessary for initiating enforcement actions. Such procedural hurdles often diminish the effectiveness of trademark protection in the digital marketplace.[12]

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[9] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215

[10] *Amway India Enters. Pvt. Ltd. v. 1MG Techs. Pvt. Ltd.*, 2019 SCC OnLine Del 9061.

[11] Organisation for Economic Co-operation and Development (OECD), *Misuse of E-Commerce for Trade in Counterfeits* 11–19 (2021)

[12] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215.

The increasing involvement of e-commerce platforms in warehousing, packaging, logistics, advertising, and promotional services has also blurred the distinction between a passive intermediary and an active commercial participant. Although platforms frequently rely on the safe harbour protection available under Section 79 of the Information Technology Act, their extensive participation in commercial transactions has prompted courts to examine whether such entities should continue to enjoy complete immunity. The absence of clear statutory standards defining the threshold of active participation has resulted in considerable legal uncertainty.[13]

Furthermore, existing notice-and-takedown mechanisms often provide only temporary relief. Infringing listings are commonly restored under different seller identities or modified product descriptions shortly after removal. This recurring cycle increases enforcement costs for trademark proprietors and weakens consumer confidence in online marketplaces. Consequently, effective brand protection requires not only responsive grievance mechanisms but also proactive monitoring and stronger verification procedures by intermediary platforms.[14]

Beyond ensuring that trademark owners are protected, proper enforcement also helps consumers avoid buying fake products that could be dangerous, poor quality, or misleading. By making sure online platforms take responsibility, consumer confidence is increased and the digital marketplace becomes more trustworthy.

RECOMMENDATIONS

The existing legal framework governing intermediary liability should be strengthened to ensure effective trademark enforcement while preserving the benefits of digital commerce.

First, e-commerce platforms should adopt more robust seller verification mechanisms, including mandatory Know Your Customer (KYC) compliance and periodic verification of seller credentials. Such measures would discourage anonymous sellers from repeatedly listing counterfeit products under different identities.[15]

Secondly, notice-and-takedown procedures should be made more efficient through standardized timelines for the removal of infringing listings and greater transparency in grievance redressal. Repeated instances of infringement by the same seller should trigger stricter consequences, including permanent suspension of seller accounts and disclosure of relevant information to trademark proprietors where permitted by law.[16]

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[13] Information Technology Act, No. 21 of 2000, § 79 (India); *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215.

[14] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India.

[15] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), Gazette of India.

[16] Information Technology Act, No. 21 of 2000, § 79 (India).

Further, legislative clarification is necessary to define the circumstances in which an intermediary may be regarded as an active participant in trademark infringement. Factors such as direct control over product listings, warehousing, advertising, fulfilment services, and promotional activities should be expressly considered while determining intermediary liability. Such clarity would reduce judicial inconsistency and improve legal certainty for both rights holders and digital platforms.[17]

Finally, stronger collaboration between e-commerce platforms, trademark proprietors, and regulatory authorities is essential to combat online counterfeiting. The use of technological tools, including artificial intelligence for identifying suspicious listings and repeat infringers, can significantly enhance proactive enforcement and consumer protection.

As artificial intelligence becomes more advanced in automatically monitoring online listings, e-commerce platforms should adopt AI-based detection tools that can spot unusual listings and individuals who repeatedly violate rules, ensuring counterfeit products do not reach customers.

CONCLUSION

The fast growth of e-commerce has changed India's retail environment, but it has also led to a rise in trademark violations and fake products online.The current legal system, which includes the Trade Marks Act, 1999, the Information Technology Act, 2000, and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, tries to support technological progress while ensuring proper protection of intellectual property rights.

Recent court rulings have made it clear that online platforms are not fully protected if they help in spreading infringing content.

As India's digital economy grows, it is important to make online platforms more responsible by setting clear rules, ensuring proper checks, and taking active steps to enforce laws.

A fair set of regulations that supports innovation and provides strong trademark protection will help protect businesses, build trust among consumers, and support the long-term development of India's digital market.

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[17] *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 12215.