

TRADEMARK INFRINGEMENT AND THE LEGAL ACCOUNTABILITY OF E-COMMERCE PLATFORMS

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ABSTRACT

The emergence of e-commerce as a dominant mode of trade in India has significantly impacted the enforcement of intellectual property rights, particularly trademarks. The convenience and scale of online marketplaces have enabled businesses to reach wider consumer bases, but they have also made it easier for third-party sellers to engage in unauthorized sales and misuse of registered trademarks. This trend has raised pressing concerns about the sufficiency of existing legal frameworks to regulate online trademark infringement effectively. While the Trade Marks Act, 1999 provides a comprehensive mechanism for protecting registered trademarks, it does not explicitly address the complex realities of infringement in digital marketplaces. As a result, judicial interpretation has become central to determining whether and when e-commerce platforms may be held accountable for such violations. This study critically examines the scope of trademark infringement under Section 29 of the Trade Marks Act and explores the extent to which e-commerce platforms can be deemed liable for facilitating or failing to prevent unauthorized use of registered marks by third-party sellers. Through the analysis of key legal provisions and judicial developments, the research identifies a growing recognition that platforms which actively participate in advertising, listing, repackaging, or delivering infringing goods may no longer be seen as neutral facilitators but as entities with contributory responsibility. The study also highlights the lack of express statutory obligations for online platforms to prevent or respond to trademark misuse, creating challenges for brand owners seeking redress. In light of this gap, the paper suggests specific amendments to the Trade Marks Act, including clearer definitions of digital infringement, platform liability, and mandatory redressal mechanisms. These reforms are necessary to ensure that the objectives of trademark protection—preserving brand integrity and preventing consumer confusion—remain effective in the evolving digital economy of India.

KEYWORDS – Trademarks Act, Liability of Platforms, Trademark Misuse, E-Commerce Platforms, Third-Party Infringement

INTRODUCTION

The spread of electronic commerce in Indian market has literally transformed the scene of business ad trading, retail activity and building interaction with the brand. As the digital marketplaces are on the rise, places like Amazon, Flipkart, and Snapdeal, among others, are now allowing businesses to reach customers in hitherto unimaginable geographies. Such digital convenience, however, has been bought at a price of greater openness to being a victim of trademarks infringement¹. Third party sellers using online platforms to sell and distribute products may not be easily checked to confirm their authenticity or prospect to meet property rights standards, so they practically allow the use, copying or sale of branded items though producers of the trademarks have not consented to the exercising of their trademarks. Online listings that are unregulated and cannot be effectively observed at real-time causes grave threats to brand equity and consumer belief².

Although the Trade Marks Act, 1999 has been comprehensive in its outlook about the protection of trade marks in normal trade, it has not been specific enough about the culture of

¹ Shivam Singh, *Trademark Infringement and the Role of E-Commerce Platforms: A Study in Indian Context*, 6 J. INTELL. PROP. RTS. & TECH. L. 55, 60 (2022).

² Ketan Thakker, *Intermediary Liability for Trademark Infringement on E-Commerce Platforms: A Comparative Study*, 45 INDIAN J.L. & ECON. 119, 127 (2020).

trade in the digital world³. With no provisions put in place to address the status and functions of e-commerce sites, it still remains open whether intermediaries can be blamed when trademark infringements are committed by third-party sellers. Passive hosting and active facilitation are of two different scales, complicated by the many unclear boundaries, which warrant further analyses on intermediary liability, contributory infringement, and statutory responsibility toward the rights holders⁴. Online infringement has prompted scholars to argue that the Indian IP regime is ill prepared to respond to online infringement because of lack of harmonized IP governance in the digital sphere, and inadequacy of procedural enforcement under the IP regime⁵.

One can, in the light of these legal lacunae and the incessant cases of malpractice with brand names on the internet, heighten the importance of reassessing the extent and applicability of the Trade Marks Act on the online environment. This paper seeks to examine the appropriateness of the current legal framework provided in Section 29 of the Act as well as the general principles of the intermediary liability in meeting the challenge of digital commerce. It will also aim at examining how the gap can be bridged between offline protection of trademarks and online enforcing mechanisms with the aid of legislative changes or judicial interpretation. As it is indicated in the modern literature, trademarks protection in the environment of e-commerce is not only an obligatory requirement prescribed by the legislation, but a substantial step towards preserving consumer confidence and integrity of digital trade.

RESEARCH PROBLEM

As e-commerce has been expanding so fast in India, sale of counterfeit or infringing products online has also grown significantly. The owners of trademarks have a serious problem with addressing their rights because, through the digital network, unauthorized traders employ the opportunity to take the names of brands without any consent. The right against direct infringement remedies is covered by the Trade Marks Act, 1999, but e-commerce platforms, or their liability in cases when they neglect or encourage such violations is not covered under the law. This ambiguity on the part of laws and the standards of the court leaves pertinent questions related to how hard these platforms should or even could be held to account. The problem begs an intense legal study to understand whether existing frameworks are adequate to capture the vagaries of entertainment of the trademark rights in the digital market.

RESEARCH HYPOTHESIS

“Although Section 29 mainly covers direct infringers of the Trade Marks Act, 1999, the evolving jurisprudence and online trade arena creates a possible statutory implication that e-commerce operators may be indirectly liable to infringe the trademark when they are directly and actively involved in facilitating, promoting, or distributing infringing goods. Present law protections, although rudimentary, do not appear to be sufficient in preventing brand infringement and selling fake goods on the internet, thus requiring more serious enforcement tools and more direct intermediary liability”

³ Anuradha Sharma, *Counterfeiting in the Digital Age: Challenges to Trademark Protection in E-Commerce*, 18 INDIAN J.L. & TECH. 201, 207 (2022).

⁴ Pranav Agarwal, *E-Commerce and the Doctrine of Intermediary Liability in India*, 34 NAT’L L. SCH. INDIA REV. 93, 98 (2021).

⁵ R.S. Praveen Raj, *Online Counterfeit Sales and Trademark Liability: Evaluating Platform Accountability*, 25 J. INTELL. PROP. RTS. 65, 70 (2021).

RESEARCH OBJECTIVES

- To understand Section 29 of the trademarks Act to determine liability of platforms on trademark misuse.
- To examine major rulings to establish at what point the e-commerce platforms will be held to liability in the case of third-party infringement.
- To determine the extent to which Indian laws are effective to curb brand misuse and sale of counterfeits over the internet.

DISCUSSION

Trademark infringement in e-commerce

The increase in e-commerce, which is exponentially expanding, has revolutionized the field of retail, consumer behavior, and at the same time has resulted in the creation of new challenges in the enforcement of intellectual property rights, especially trademarks. Online service providers act as third parties between the seller and consumers and sometimes, they enable the sale of counterfeited or infringing products. On the one hand, the Trade Marks Act, 1999, offers sufficient remedies, in case of malicious use and infringement of a registered mark, on the other, there will always be the question arising whether the e-commerce platforms will be put to account as infringers in their own right. The Act provides a description of the different ways of infringement in section 29 among them is the usage of marks which are identical or seem to be similar in conducting trade. But it is complicated when this violating content has been uploaded not directly by the platform but by third party vendors. In *Christian Louboutin SAS v. The Delhi High Court ruled in Nakul Bajaj*⁶ that an intermediary would be liable when it actively engage in selling or marketing an infringing good, which would deny a broad scope of inherent protection available under Section 79 of Information Technology Act, 2000.⁷

Along with judicial development of the concept of intermediary liability, there is still a certain legal gap in the specifics of the regulation of trademark infringement online. Although consumer protection laws and e-commerce laws have tried to make the due diligence a compulsory requirement on the part of online marketplace, enforcement is uneven. Legal scholars say that the Indian law does not have a holistic mechanism to address the dynamism of online trademark infringements, particularly in trans-border situations when suspiciously infringing products could be in foreign jurisdictions⁸. Review of e-commerce and IPR enforcement in India A report on e-commerce and IPR enforcement in India also sees the shortcomings in the procedural protection and reinforces the importance of more active customs and platform-side oversight and interventions.⁹

⁶ *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 13032

⁷ Pranav Agarwal, *E-Commerce and the Doctrine of Intermediary Liability in India: Reconciling the Trade Marks Act with the IT Act*, 34 NAT'L L. SCH. INDIA REV. 93 (2021).

⁸ Shamnad Basheer, *E-Commerce and the Enforcement of Intellectual Property Rights in India*, 12 J. INTELL. PROP. L. & PRAC. 124 (2020).

⁹ Anuradha Sharma, *Counterfeiting in the Digital Age: Challenges to Trademark Protection in E-Commerce*, 18 INDIAN J. L. & TECH. 201 (2022).

Table 1 – Types of Infringement in e-commerce

Type	Description	Example
Strict Liability	Selling a registered trademark without an authority	Using the Nike trademark logo with a counterfeit mark of a Nike shoe
Passing Off	The confusion of consumers by the use of same branding	Adibas instead of Adidas
Meta Infringement	Tag Applying trademarks to the SEO of websites to attract people	Incorporating the utility of trademarks in the promulgation of the SEO of sites with the objective of attracting people to the Gucci bags that were not Gucci products
Domain Abuse	Name Imitations of domain names	Impersonation of brand names with fake websites Fake websites with imitation of brand names that sell imitated Reliance products "www.reliancefashionindia.com" creates fake Reliance products https://www.ril.com/fraud-alert
Counterfeiting	Copying original product and packaging	Duplicate perfumes being sold as Dior at on the internet stores

Provisions of Infringement under Trademarks Act ,1999

The main legislation of trading laws in India is the Trade Marks Act, 1999. It ensures registration, protection, and enforcement of trademarks in order to protect identity, and goodwill of business. Act explains that a trademark is any sign that is distinct and can be graphically illustrated, and will distinguish the good or services of one party against those of other parties. It defines the rights of the owner of the trademarks, the procedures to be followed in registering the trademarks and the remedies to be taken against infringement. Under the section 29 of the Act there is specific dealing with trademark infringement where the unauthorized use of identical or deceptive similarity of marks when they are used as part of trade is also punishable as offence. The Act amends not only civil liability, but also criminal penalties, such as injunction protection, damages, and seizure of goods that have infringed the laws, thus making it very essential in the protection of brands and commercial integrity in India.

Table 2 – Sections relevant for Trade mark infringement in ecommerce

Section	Description	Relevance to e-commerce
Section 29(1)¹⁰	Infringement is the use of a mark identical, or deceptively similar, in the course of trade without authorization.	This is breached by online sellers who post products as counterfeit by use of the brands names

¹⁰ Trade Marks Act, 1999, § 29(9) (India).

Section 29(2)(c)¹¹	Registration of a mark similar with bad faith, unfair advantage of the reputation or the uniqueness of the registered mark.	Cover instances of e-commerce listing acting in misleading fashion or watering down brand value.
Section 29(4)¹²	Infringement will arise in case of difference in similarity of goods/services provided the registered trademark has reputation in India and its usage is to unfairly take advantage of or is injurious.	Covers the wrongful use of famous trademarks in different fields of products that are sold online.
Section 29(5)¹³	An infringement forms where a registered trademark is used in the business or trade names, on labels of goods or in advertisements	Applicable in instances where sellers/websites trade in or market commodities under legally secured trademarks.
Section 29(6)¹⁴	Introduces the concept of a use of a trademark to be inclusive of: affixing to goods (a), offering to sale (b), stocking (c), importing/exporting (d) and advertising (e).	The online listing, warehousing, and banners during marketing promotions of e-commerce can be summarized as such.
Section 29(8)¹⁵	Precautions against taking advantage of a trademark in advertisement that deceived the commoners or negatively impacts the distinctiveness of the mark.	The platforms, where deceptive or infringing advertisements with regard to goods are executed, are also included.
Section 29(9)¹⁶	Visual representation is not the only way infringement could take place as it could be spoken or digital.	Overlays voice search, audio/video advertisement, or algorithm product listings on Internet media.

The Indian legal provisions governing the field of trademark infringement can be found in section 29 of the Trade Marks Act, 1999, and in particular to the sphere of e-commerce, the unauthorized use of the trademarks is rapidly growing. Some of the infringements the section addresses include direct use of the same or deceptively similar marks (S 29(1)), misuse that damages the reputation or distinctiveness of a trademark (S 29(2) (c)) and use of already well known marks on different goods (S 29(4)). It also covers use of trademarks on business names, labels and advertising without authorization (as in SS 29(5)), and the loose definition of the term use that there is online listing, storing, and advertisement of items (as in SS 29(6)). Notably, the Act also forbids misleading advertisement (sect. 29(8)) and accepts infringement with non-visual as well as digital usage (sect. 29(9)) and spoken use. A combination of these provisions gives covers the possibility of pursuing online sellers to be held accountable to misuse of the trademark within the context of online markets and possibly platforms.

¹¹ Trade Marks Act, 1999, § 29(c)(2) (India).

¹² Trade Marks Act, 1999, § 29(4) (India).

¹³ Trade Marks Act, 1999, § 29(5) (India).

¹⁴ Trade Marks Act, 1999, § 29(6) (India).

¹⁵ Trade Marks Act, 1999, § 29(8) (India).

¹⁶ Trade Marks Act, 1999, § 29(9) (India).

Important rulings on Trade mark Infringement in e-commerce

In order to consider liability of e-commerce platforms regarding third parties trademark violation, one needs to review key judicial decisions which predetermine the level of platform liability. The important ruling in this context is that of *Christian Louboutin SAS v Nakul Bajaj*, a Division Bench judgment of Delhi High Court which gave the judgment that where an e-commerce platform is a proactive participant in the sale of infringing goods its action may constitute a breach of a non-exclusive right to the right-holder under the Trade Marks Act, 1999 as a consequence to failure to remove infringing goods is no longer accorded the protection of a mere intermediary as provided under Section 79 of the Information Technology Act, 2000. On the same lines, in *Amway India Enterprises v. IMG Technologies*, the court stressed that websites cannot avoid liability subject to storing, packaging, and making delivery of fake goods. These judgments indicate that liability depends on the level of participation: those platforms that amount to little more than passive conduits will most likely be immune and those that actively participate and facilitate infringing goods on a commercial scale will be either directly or indirectly liable under trademark law.

- ***Christian Louboutin SAS Vs. Nakul Bajaj*¹⁷**

The court assumed that in a landmark case, e-commerce websites could not be given intermediary protection under the Section 79 of the IT Act¹⁸ when it was actively involved in transactions of the sale of goods. The site that was analyzed by the court is the websites named darveys.com and it dealt in the sale of luxurious items amongst which fell the items bearing the mark of Christian Louboutin. The platform did not only list the products but chose the sellers, regulated the payment and delivery as well as promoted the products. Therefore it could not be considered as passive intermediary but rather as an active participant. The case law highlighted that as soon as an e-commerce platform becomes involved in activities such as advertisement, quality monitoring, or warranting their originality, it is not allowed to avoid liability regarding a violation of Trade Marks Act, 1999. It was the first precedent-setting case that fundamentally allows a distinction to be drawn between a passive and active intermediary and created accountability measures of online intermediaries where there is a violation of trademarks of third parties.

- ***Amway India Enterprises Pvt. Ltd., v. IMG Technologies Pvt. Ltd.*¹⁹**

Amway has also gone against a number of e-commerce business such as IMG and Flipkart over non-authorised sales of its goods. According to Delhi High Court, it was stated that the parties engaged in warehousing, repackaging, or delivery of counterfeit goods are not benefited with safe harbor under Section 79 of IT Act. The Court differentiated between those market places that merely listed their services and those which facilitated sales, with a mention of the fact that the platforms worked as fulfillment services and that they had control over inventory. The case extended the scope of the use in Section 29 of the Trade Marks Act by virtue of the fact that e-commerce sites could be held secondarily liable despite the listing being made by third parties. The court stressed that the condition of consumer confidence in the branding of the platform gave the relevant duty to be attentive and the sale of products that are not appealing because they are not approved or in an altered form, even certifying original products, could lead to infringing trademarks.

¹⁷ *Christian Louboutin SAS v. Nakul Bajaj*, 2018 SCC OnLine Del 13032 (India).

¹⁸ Information Technology Act, No. 21 of 2000, § 79, India Code (2000).

¹⁹ *Amway India Enterprises Pvt. Ltd. v. IMG Technologies Pvt. Ltd.*, 2019 SCC OnLine Del 10680 (India).

- ***Kent RO Systems Ltd. and Amit Kotak***²⁰

Company by the name Kent RO instilled a claim of injunction over the illegal sale of its products online basing on the fact that some of the online venders were taking advantage of its trademark to deceive the consumers. Delhi High Court directed the case in favour of Kent and decided that the defendants had no permission to utilize or trade in the goods and, therefore, were in the violation of Section 29(1) of the Trade Marks Act. The court also instructed online business conductors to be responsible once cited with infringement listings. The judgment put on platforms a pressure to delist illegal or unauthorized goods, supporting the notion that further hosting of infringing goods after the serving of a notice may constitute contributory infringement.

- ***Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd.***²¹

Here Amazon argued with the injunction that was given by the court against it selling products of Amway without its approval. Amazon claimed that it is just a middle man and it did not use the trademark as under the Trade Marks Act. The court however held that there was more to Amazon because it was not only a neutral platform; it also played a role of listing, delivering, and branding. The court also stressed that having control over the sales process caused a certain degree of responsibility in Amazon. It noted that even on genuine merchandise that is sold without the authorization of the manufacturer particularly when tampered with or changed in a manner can cause trademark damage. The case strengthened the importance of how trademark infringement may still be committed where the product itself is not a fake.

- ***Daimler AG v. Carzspa Automotive***²²

Daimler AG filed a suit against a car dressing company over the illegal use of the trademark, Mercedes-Benz, on its page and social networks. The defendant stated that it only made simple allusion to the brand. This was considered to be an infringement by the court as provided in Section 29(2)(c), since the use was an unfair exploitation of the brand name and a deception to the customers of Daimler. The case presents an example whereby the use of the popular trademarks by the service providers over the internet by their advertising on the internet, the usage of logos or even their descriptions may hold them liable. This is particularly happening to digital markets or aggregators which are profiting on the traffic of customers with unauthorized use of the brand names.

- ***L'Oréal v. Brandworld***²³

L'Orl employed lawsuits to bring an internet retailer that was selling counterfeit beauty products under its trade mark. The court established that besides unauthorized use of L Ors trademark by the defendant, the defendant had also misled customers through similar packages and online advertisements. The court made it clear that e-commerce sites and sellers are not entitled to third party confusion netted by wrongful use of reputable marks. This ruling reinforced the position that sale of goods online via infringing branding paid without express counterfeit knowledge constitutes an infringement against Section 29(4) and 29(5).

- ***Snapdeal Pvt. Ltd. Vs S. Seethalakshmi***²⁴

The issue that Snapdeal wanted to be declared was the fact that it was a mere intermediary and did not operate the products being sold in its platform. The Madras High Court, however, clarified that when a platform does nothing after being informed about the infringement, then it can lose immunity, covered under Section 79 of the IT Act. The court implied that the e-

²⁰ Kent RO Systems Ltd. v. Amit Kotak, 2017 SCC OnLine Del 10849 (India).

²¹ Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd., 2020 SCC OnLine Del 454 (India).

²² Daimler AG v. Carzspa Automotive, 2023 SCC OnLine Del 2172 (India).

²³ L'Oréal v. Brandworld, 2018 SCC OnLine Del 13057 (India).

²⁴ Snapdeal Pvt. Ltd. v. S. Seethalakshmi, 2021 SCC OnLine Mad 3313 (India).

commerce sites should exhibit quick redressal and takedown. The ruling contributed to a judicial anticipation that the platforms should be in the forefront in ensuring that the IP violation is dealt with especially once they have been informed by the brand owners.

- ***Skoda Auto v. Kamal Auto***²⁵

In this pre-e-commerce scenario, Skoda was suing an unofficial dealer, who was imposing the Skoda trademark to his services of cleaning cars (garage). According to the court, a logo, name, or mark of a brand used without authorization even with the purpose of servicing was a Section 29(5) infringement. It is not an online case, but regularly referred to under e-commerce issues to state that merely associating with a trademark without its authorization, even in the case of genuine goods or services, may constitute a misuse, because this can confuse consumers or create false suggestions of association.

- ***Raymond Ltd. Vs Raymond Pharmaceuticals***²⁶

Raymond ltd. had a problem with an online seller selling products with the name Ray Pharmaceuticals. The Bombay High Court affirmed that although the goods were other than similar, in the event of using a well-known mark without genuine reason the section 29(4) was breached. The case is essential in determining how e-commerce sellers can infringe even though they are dealing in other fields in case the online branding IT has an implication of connection with a renowned mark.

- ***Tribhovandas Bhimji Zaveri v. Kiran Gems***²⁷

An online seller used deceptively close marks on an item listing in e-commerce websites which is the reason TBZ sued this online seller. The Bombay High Court stated that even minor modifications of popular trademarks may be an infringement in case they are applied in online commercial situations when consumers are likely to become confused. This ruling strengthened the elevated expectation of protection offered to well-known marks in online business and established that direct usage as well as secondary use (such as sponsored advertisement or domain names) can constitute infringement.

A rich discussion to the 10 case laws on trademark infringement in e-commerce in India in a summary fashion with an analysis out of the 4 main sub-themes. All the sub themes include the development of the case law regarding intermediary liability, misuse of well-known trade marks, whether a platform is active or not and accountability during and after notice.

1. Difference in Active and Passive Intermediaries

Among the fundamental legal aspects that come out of the Indian jurisprudence is the difference in passing between passive intermediaries who only cause a listing, but not anything more as opposed to active intermediaries who engage in a promotion, storage or fulfillment of infringing goods. In the case of Christian Louboutin SAS v. Nakul Bajaj, In Delhi High Court, it was famously held by Nakul Bajaj that e-commerce platform titled Darveys.com was not a mere passive intermediary because it discoursed sellers, promoted luxury products, handled delivery, to the extent of providing customer loyalty rewards. On the same note, in Amway v. 1MG Technologies, the decision revealed that stores which warehouses and packs products exceeded the intermediary protection provisions of the Information Technology Act- § 79 of the Act. This chain of cases helps to highlight that where an intermediary takes control of the sale mechanism, it can be directly accountable under the Trade Marks Act, 1999 of facilitating infringement.

2. Liability of Unauthorized or Parallel imports

²⁵ Skoda Auto India Pvt. Ltd. v. Kamal Auto, 2009 SCC OnLine Del 2459 (India).

²⁶ Raymond Ltd. v. Raymond Pharmaceuticals, 2010 SCC OnLine Bom 168 (India).

²⁷ Tribhovandas Bhimji Zaveri Ltd. v. Kiran Gems, 2021 SCC OnLine Bom 508 (India).

There are a few cases involving goods which are not authorized to be sold or parallel imports where the products might be genuine but the seller is not licensed of the trademark. The case of Amazon Seller Services v. As the Delhi High Court identified, the sale of even real goods may constitute infringement, when the consent of the brand owner is not sought, especially in situations when goods are changed or sold without warranties. This perspective is fortified by the case Kent RO Systems Ltd. v. Amit Kotak as the court instructed platforms to order removal of unauthorized sellers/vendors on receipt of notice. The implication here is that a trademark exhaustion does not occur, instead of what could occur in a digital environment, could be held liable due to a false listing, will be that given consumer perception which is informed by a branding signal and endorsement cue often executed by underlying platform, this should be done carefully not to misinform consumers in such a way that dilutes brand value, which a brand could hold against that platform in that circumstance.

3. Some Examples of Misappropriated Famous Trademarks and Online Dilution

The courts have also ruled on the misuse of the well-known marks even in different goods or even in different services as per Section 29(4) of the Trade Marks Act. In Raymond Ltd. v. Raymond Pharmaceuticals the Bombay High Court held that the exploitation of the mark Raymond mark by a pharmaceutical organization, irrespective of the category of products in which it was utilized, would be an abuse on account of the mark being recognized. This doctrine has been brought online in Daimler AG v. Carzspa Automotive in which misuse of the Mercedes-Benz mark as shown in social media and advertisements were concluded to weaken the uniqueness of the brand. Tribhovandas Bhimji Zaveri v. Even a slight change of the famous TBZ mark in the jewelry advertisements online came to be regarded as dishonest by Kiran Gems. Such rulings point to the fact that during the digital age, trademark rights may apply to goods other than identical goods, as a fault of the trademark, but rather as a heat of the reputation.

4. Platform Accountability and Post Notice Obligations

One of the emerging judicial tendencies is to put the responsibility on those platforms that sell products by e-commerce after being made aware of the content violating the law or the listing itself. In Snapdeal Pvt. Ltd. v. S. Seethalakshmi, the Madras High Court decided that platforms are not allowed to host infringing goods after the legitimate complaint of the same by a trademark owner has been filed. Failing to do this promptly may amount to contributory infringement. The concept of this post-notice responsibilities framework is supported by the discussions made in L Oral v. Brandworld, in which the court has recognized that the failure of the latter to keep an eye on or take off offending beauty goods on online listing shatters consumer confidence and breaches the rights of the mark owner. Courts also require e-commerce platforms to establish well-established internal systems that check, verify, and remove infringing materials after being identified.

The Indian courts have, based on these ten landmark cases, created a multi-layered jurisprudence by subjecting the e-commerce platforms to a greater responsibility. Passive and active roles, protection of well-known marks, scrutiny regarding unauthorized sales and the post-notice responsibility are considered to be the pillars of the developing legal framework. Collectively, the rulings are geared towards striking the right balance between the gains of online shopping and safeguarding trademarks rights on the Internet market.

Suggestions to make amendments in the Trade Marks Act , 1999

The following provides a list of amendments to be made to the Trade Marks Act, 1999 in order to meet the emerging demands of e-commerce taking place in regard to trademark infringement. The following offers are aimed at adding transparency, responsibility, and effective processes of addressing violation on online platforms:

1. Introduction of a Concrete Definition of the Term "E-commerce Platform"

Suggested Amendment:

Add the meaning of the e-commerce platform or online marketplace under the new clause of Section 2 entitled Definitions.

Reason:

The definition of digital intermediaries or platforms has not been defined in the Act yet. A narrower definition would serve to define the range of liability of the online marketplaces that would serve to explain the applicability of the Act in online environment.

2. Introduction of a fresh Sub- section under Section 29 Platform Facilitated Infringement

Suggested Amendment:

Add Section 29(10) to clearly clarify that platforms who facilitate, endorse or fail to take action against infringing listings after being notified can be subject to liability.

Proposed Text:

(10) Any person or organization who enables, promotes, advertises or facilitates the unauthorised use of a registered trademark whilst engaging in the trade on either digital or electronic platforms shall be considered to have infringed the trademark under this section.

Reason:

This would make jurisprudence regarding cases such as Christian Louboutin a code. Directly applying statutory recognition of indirect or contributory infringement by active platforms by Nakul Bajaj.

3. Further explained From Safe Harbour and Due Diligence Obligations

Suggested Amendment:

Add some new clause or clause explanation in Section 29(6) or Section 134 that would fulfill the position between Trade Marks Act and Section 79 of the IT Act in case of liability of intermediaries and their due diligence.

Reason:

To reconcile the duties under the two legislations and make sure that the platforms purportedly availing safe harbor do evidence prompt take down, active surveillance, and obedience of take down directives.

4. Mandatory Disclosure and Notice and Takedown System

Suggested Amendment:

Bring out a new section to procedure (e.g., Section 137A) to oblige platforms to require:

- An open grievance redressal mechanism,*
- Protocols of IP rights of notice-and-takedown,*
- Exposure of seller identification when requested by trader owners.*

Reason:

This would legalize such judicial anticipations as in the case of Snapdeal v. The case of Seethalakshmi and Amway v. IMG ensured faster redress and deterrence.

5. Severe punishment of Repeat Online Fraud

Suggested Amendment:

Add a caveat to Section 103 (Penalty for the application of false trademarks) in order to establish harsher punishment on second-time digital offenders or platform negligence.

Reason:

To prevents deliberate, repeated violation through online means especially by rogue vendors who take advantage of this anonymity on platforms.

The amendments would bring the Trade Marks Act into the modern age to handle the distinctive issues of digital commerce. They echo legal trends and international best practices (such as the EU Digital Services Act), and they make sure that such innovation in the world of e-commerce is counterbalanced by the solid protection of brand owners.

CONCLUSION

The acceleration of e-commerce mode of business has brought some changes in the way goods are reaching the market and at the same time, it has introduced the new avenues where trademark infringement issues have become harder to ignore than ever under the older set of laws. Although the Trade Marks Act, 1999 has an effective framework to protect rights of brands, it has conventional provisions which take into consideration a physical marketplace that is not comprehensive to the nuances of online trade. Such court cases like that of *Christian Louboutin v. The case of Nakul Bajaj and Amway v. IMG Technologies* has contributed significantly to the evolution of the concept of trademark liability into the Internet space, at least when it comes to participants in online platforms that are not so much neutral intermediaries but rather full-pledge participants. The two cases have established the line beyond which e-commerce players can be feared to assist in or having failed to prevent third party infringe.

However, the absence of clear legislative guidelines for e-commerce platforms has resulted in a fragmented, inconsistent, and often ineffective system shaped by individual court decisions. While judges have consistently held that platforms must act once they are notified of illegal listings, there is no strong legal requirement for them to act within a specific timeframe, proactively monitor listings, or verify the legitimacy of sellers. This situation is vague and legally dubious without the definition of e-commerce platforms or lack of concrete laws that cover the digital intermediaries at the Trade Marks Act, which leads to unequal enforcement. Also, there are major procedural difficulties to the enforcement of right of trademark owners on the decentralized and anonymity characteristic of online markets.

In order to guarantee clarity, consistency, as well as fairness of the enforcement trademark rights in the digital age, the reform of the legislation is required. The recommended changes comprise of classifying e-commerce sites in the Act, adding contributory liability, aligning obligations of intermediaries with the IT Act, and observing compulsory takedown procedure. Besides formalizing judicial trends, the changes would place the trademark law in India in compliance with global practices. With online shopping rapidly expanding even today, there will be a vital necessity of an assertive and clearly stipulated legal regulation that can safeguard the consumer confidence and eventually economic worth of digital market brands.

Author statement

All authors contributed equally to this work.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Data availability

Data will be made available on request.

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REFERENCES

- Anuradha Sharma, *Counterfeiting in the Digital Age: Challenges to Trademark Protection in E-Commerce*, 18 INDIAN J.L. & TECH. 201, 207 (2022).
- Apoorva Mandhani, *Intermediary Liability in India: Revisiting the Safe Harbour in the E-Commerce Era*, 7 INDIAN J.L. & POL'Y 1, 8 (2020).
- B. Lakshmi, *Liability of the E-Commerce Platforms for Infringement of the Trademark*, 10 VIDHYAYANA 2146 (2024).
- Janvi Johar & Rekha Verma, *Navigating the Intricate Web of Counterfeiting of Goods in India's E-Commerce Arena*, 7 INT'L J. L. MGMT. & HUMAN. 1025 (2024).
- Ketan Thakker, *Intermediary Liability for Trademark Infringement on E-Commerce Platforms: A Comparative Study*, 45 INDIAN J.L. & ECON. 119, 127 (2020).
- Prachi Tyagi, *Counterfeiting and Its Impact on Trademark in the Fashion Industry through the Lens of Indian Law*, 29 J. INTELL. PROP. RTS. 3397 (2024).
- Pranav Agarwal, *E-Commerce and the Doctrine of Intermediary Liability in India*, 34 NAT'L L. SCH. INDIA REV. 93, 98 (2021).
- R.S. Praveen Raj, *Online Counterfeit Sales and Trademark Liability: Evaluating Platform Accountability*, 25 J. INTELL. PROP. RTS. 65, 70 (2021).
- Rohan George, *Trademark Enforcement in the Digital Economy: Bridging the Gap between IP Law and E-Commerce Regulation*, 10 NUJS L. REV. 56, 62 (2018).
- Shamnad Basheer, *E-Commerce and the Enforcement of Intellectual Property Rights in India*, 12 J. INTELL. PROP. L. & PRAC. 124, 130 (2020).
- Shivam Singh, *Trademark Infringement and the Role of E-Commerce Platforms: A Study in Indian Context*, 6 J. INTELL. PROP. RTS. & TECH. L. 55, 60 (2022).
- Shruthi B & Lakshmi Pooja K, *From Global Reach to Brand Breach: Trademark Dilution in the Era of Digital Media*, 4 INDIAN J. LEGAL REV. 757 (2024).
- Ujwal Sharma & Gargi Bhadoria, *Legal Challenges and Regulations for E-Commerce Companies*, 7 INT'L J. L. MGMT. & HUMAN. 1314 (2024).