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COUNTERFEITED GOODS LEADING TO TRADEMARK INFRINGEMENT ON E-COMMERCE PLATFORMS IN INDIA.

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Abstract

Over the passage of time, there has been an enormous growth in the rise of E-Commerce platforms in India as it has brought numerous benefits, such as better consumer access to a wide range of goods and services with the convenience of online shopping. Hence, it has become imperative for businesses to protect their brand in the digital world through trademark protection. As the buying and selling of goods and services takes place via electronic means thus, it is being termed as e-commerce. It creates a direct link between the manufacturers/sellers and consumers, making it convenient for distribution and ensuring free and continuous transfers. However, the prevalence of counterfeit products, parallel importation of goods, sale of defective products, etc., has led to trademark infringements in these direct transactions which has in turn hindered the growth of e-commerce in India and is gravely affecting the digital economy as well as the overall integrity of the online marketplace.

Counterfeited goods refer to the act of producing emulated goods that provide a much degraded quality and are manufactured and sold under another company's trademark without any prior consent or approval. This is done to deceive consumers into believing that they are purchasing genuine products. When such goods are sold on e-commerce portals, they bear unauthorized reproductions of the registered trademarks. This plays with the distinctiveness of the original brands and puts the consumers in a dilemma leading to trademark infringements. The anonymity of these online transactions makes it a challenge to identify the parties and hold them accountable for their actions. E-commerce portals provide a vast range of access and ease for such producers to set up online shops, which not only reduces the verification process but targeting audiences also get easy by way of e-commerce platforms which in turn, amplifies the impact of their illicit acts.

While the 2009 amendment to Information Technology Act, 2000 clarified intellectual property rights issues in the cyber law, the unresolved issue of secondary liability for a third-party trademark infringement poses a significant challenge. Hence, by way of a non- doctrinal research the researcher aims to delve into the concept of secondary liability of e-commerce platforms in India, the US and the UK by doing a comparative analysis of the judicial pronouncements given in this matter, to identify the responsibilities and liabilities of these e-commerce portals when it comes to selling and offering of counterfeited products.

Collaboration between the e-commerce portals, rights holders and government agencies can prove to be very effective in curbing counterfeiting. With the help of growing AI, bots can detect and prevent the listing of such counterfeit goods. By way of these technologies, seller behaviors and product specifications can be studied and analyzed, thereby decreasing the chances of trademark infringement.

The research explains the twisted challenges of counterfeiting, shedding light on the complexities of protecting trademark rights in the online marketplace. Through this study, proposed amendments to existing legislation will be examined to curb trademark infringement on e-commerce portals. The result underscores the need for a solidly built enforcement mechanism, associated efforts between the stakeholders, law enforcement agencies, intellectual property rights holders, etc., and the enhanced consumer awareness campaigns to control this rapidly growing menace.

Keywords

Trademark Infringement, Counterfeited goods, E-commerce, Secondary Liability, Intellectual Property Rights Holders.

Introduction

A Trademark is considered as one of the most valuable asset which allows its proprietor to enjoy an exclusive right over his goods and enables consumers to identify their goods among all others. A trademark is a mark which includes any words name or symbol configuration, signature device shape of goods, packaging, combination of colours or any combination thereof which a person adopts and be used for identify and distinguish once goods from those of others. Section 2(1)(2b) of the Trademark Act, 1999 defines trademark as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging, and combination of colours". When a trademark gets registered and validated, only the proprietor of the trademark has the exclusive right to use it. Therefore any unauthorized use of trademark without the consent of proprietor constitute trademark infringement Trademark protection in e-commerce has become an indispensable component of business activities in the cyber world due to the tremendous increase in the rate of it in e commerce portals.

As the buying and selling of goods and services takes place via electronic means thus, it is being termed as e-commerce. It creates a direct link between the manufacturers/sellers and consumers, making it convenient for distribution and ensuring free and continuous transfers. A wide variety of commerce is conducted in this way, spurring and drawing on innovations in electronic funds transfer, supply chain management. Internet marketing, online transaction processing, Electronic Data Interchange (EDI), automated inventory management systems, and automated data collection systems. The rising incomes and perquisites and the various variety of goods and services that can be bought over the internet is making purchasing online more attentive, attractive and convenient for consumers all over the country.

The trademark infringement has special features which develop and change rapidly in the continuous innovation of e-commerce. Some of the common issues of trademark infringement in e-commerce are selling counterfeit goods through e-commerce, selling parallel imported goods, selling default goods, using others trademark as the name, signature or advertisement of online shop, using others trademark in product description etc. Selling and False advertisement of Counterfeited goods in e-commerce is the gravest reason that leads to trademark infringement in e commerce portals. Counterfeit consumer goods are goods, often of inferior quality, made or sold under another's brand name without the brand owner's authorization. These products are fakes or unauthorized replicas of the real product.

Infringement of Trademark

Trademark Infringement is one of the gravest problems faced by the consumer society. It is due to the unfair competition. Generally it occurs in respect of those goods and services for which the particular mark is licensed, when an individual other than the registered owner is using the same mark or a misleading similar mark in the course of trade. Taking any of the essential features of the mark or taking whole of the mark and then making additions and alterations would amount to an infringement.

Offences which cause Trademark Infringement

The nature of the offences is set out in Section 101¹ and 102² of the Trademarks Act, 1999. Forging and falsifying trademarks for goods and services, making or possessing instruments for the purpose of the forging of trademarks, applying the falsification of trade description for goods which apply the falsified indication of country of origin, impairing the indication of origin already applied to such goods. When a person uses package containing to apply a mark identical or disappointingly similar to the registered mark for the purposes of packing, filling or wrapping any products other than the genuine goods of the owner of the mark, he is guilty of misuse of the mark. Section 103 of the Act stipulates that, when a trademark is made without the consent of the owner, a person shall be said to falsify a trademark.³ In the event of trademark falsification, it must be proven that there is a true trademark that belongs to some entity, whether registered or unregistered. To be counterfeits, it is sufficient if the offender makes a mark disappointingly similar to that of a genuine mark or if he makes changes, supplements or erasures of a genuine mark for which a penalty may be imposed from six months to three years imprisonment and a fine of fifty thousand to two lakhs rupees.

The Supreme Court in the case of Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceutical Laboratories⁴ held that in an action for infringement the onus would be on the Plaintiff to establish that the trademark used by the defendant in the course of trade in the goods in respect of which his mark is registered, is deceptively similar. The Delhi High Court in the case of Atlas Cycle Industries Ltd. V. Hind Cycles Ltd.⁵, wherein the Court stated that In case of trademark infringement, the plaintiff may establish that its trademark is identical with or so nearly resembles the plaintiff's work either visually or phonetically or otherwise, that is likely to deceive or cause confusion in relation to the case in respect of which the plaintiff got his mark registered.

James Chadwick & Bros. Ltd. v. The National Sewing Thread Co. Ltd.⁶ helped simplify how India's trademark infringement laws are interpreted. In the case, the Supreme Court ruled that in an action alleging trademark infringement, it is necessary to determine if the defendant's contested mark is the same as the plaintiff's registered mark. There is no need to consider other options if it is determined that the mark is identical; infringement has been shown. If the defendant's mark differs, it must be determined whether the mark The defendant is deceptively similar in that it has the potential to mislead or create confusion regarding the goods for which the plaintiff has registered his mark. The two marks must be compared in order to achieve that. The

¹ Section 101, The Trademarks Act, 1999: Meaning of applying trademarks and trade descriptions-(1) A person shall be deemed to apply a trade mark or mark or trade description to goods or services who (a) applies it to the goods themselves or uses it in relation to services; or (b) applies it to any package in or with which the goods are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or manufacture, or (c) places, encloses or annexes any goods which are sold, or exposed for sale or had in possession for sale or for any purpose of trade or manufacture, in or with any package or other thing to which a trade mark or mark or trade description has been applied; or (d) uses a trade mark or mark or made description in any manner reasonably likely to lead to the belief that the goods or services in connection with which it is used are designated or described by that trade mark or mark or trade description; or (e) in relation to the goods or services uses a trade mark or trade description in any sign, advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and goods are delivered or services are rendered to a person in pursuance of a sales order made by reference to the trade mark or trade description as we used.

² Section 102, The Trademarks Act, 1999: provides that Falsifying and falsely applying trademarks- (1) A person shall be deemed to falsify a trade mark who, either- (a) without the assent of the proprietor of the trade mark makes that trade mark or a deceptively similar mark; (b) falsifies any genuine trademark, whether by alteration, addition, effacement or otherwise; (2) A person shall be deemed to falsely apply to goods or services a trade mark who, without the assent of the proprietor of the trade mark- (a) applies such trade mark or a deceptively similar mark to goods or services or any package containing goods (b) uses any package bearing a mark which is identical with or deceptively similar to the trade mark of such proprietor, for the purpose of packing, filling or wrapping therein any goods other than the genuine goods of the proprietor of the trade mark; (3) Any trade mark falsified as mentioned in sub-section (1) or falsely applied as mentioned in sub-section (2), is in this Act referred to as a false trade mark; (4) In any prosecution for falsifying a trade mark or falsely applying a trade mark to goods or services, the burden of proving the assent of the proprietor shall lie on the accused.

³ Section 103, The Trademarks Act, 1999- provides that Penalty for applying false trademarks, trade descriptions, etc.-Any person who (a) falsifies any trade mark or (b) falsely applies to goods or services any trademark or (c) makes, disposes of or has in his possession, any die, block, machine plate or other instrument for the purpose of falsifying or of being used for falsifying a trade mark or (d) applies any false trade description to goods or services; or (e) applies to any goods to which an indication of the country or place in which they were made or produced or the name and address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 139, a false indication of such country, place, name or address; or (f) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 139.

⁴ Kaviraj Pandit Durga Dutt Sharma v. Navratna Pharmaceutical Laboratories, PTC 180 at 182.

⁵ Atlas Cycle Industries Ltd. V. Hind Cycles Ltd, AIR Bom 313 at 315.

⁶ James Chadwick & Bros. Ltd. v. The National Sewing Thread Co. Ltd., SC 1998 213.

Supreme Court ruled that in order to determine whether two marks are deceptive; they need not be placed side by side. Instead, the question should be asked of the defendant: "Is the defendant's mark as used similar to the plaintiff's mark as it would be remembered by persons possessed of an average memory with its usual imperfections?" If so, the defendant's mark is likely to cause confusion or deceive. It is necessary to note the salient characteristics of the two markings as well as the primary notion, if any, that a buyer with a mediocre IQ and a faulty memory would be able to recall after viewing the marks. The next step is to determine whether they are substantially similar, whether there is an overall likeness or resemblance, and whether there is a plausible chance of confusion or deception due to the similarity or resemblance. In order to do this, the approach must be from the perspective of a buyer with average intelligence and defective memory or recollection, not that of an uneducated, careless, or careless buyer.

E-commerce in Indian Context

In recent years, the technological revolution has taken place and the comprehensive use of the Internet, Web technology, and its applications have returned to a new level. Electronic business (e-commerce) has become widely used in world trade and services in general and in the Indian economy, as an important part of the information technology revolution. In recent times, e-commerce provides significant opportunities and challenges for developing countries such as India. While e-commerce in India is growing, even the most pessimistic expectations show that growth in the near future will be booming and substantial.

The number of companies which allow e-commerce and services technology and the Internet in India has increased during the last few years. In addition to depending on advertising revenue, major Indian portals have shifted to e-commerce. Online shopping or online shopping is a form of e-commerce that enables consumers to purchase goods and services through a web browser directly from the seller. Because of the broad range of products, the e-commerce business has grown in India with a broad range of providers & customers through the network at a minimum and best price. Each business unit wants to join online business in this modern era as the Internet users ratio in India is on a rise. In addition, e-commerce in India is still growing, but it presents major opportunities and challenges.⁷

E-commerce not only comprises the buying and selling of goods on the internet but also different business processes within each company supporting the objective. Like e-commerce, e-business (e-business) has a range of definitions and is used in a range of contexts. In particular, ICT use has improved productivity in companies, encouraged greater customer involvement and made mass personalization possible, as well as reducing costs. E-business is the transformation of the most important business processes using Internet technology. The e-business is a business capable of adapting to constant changes. The essence of the retail sector has changed. For years of intense highway rivalry, retailers will look at every aspect of their business in order to ensure a successful return on investment. Electronic retailing is a new battleground. New technology means that the standard for unified, online supply chains and domestic shopping on the Internet or on digital TV are sometimes used in interchange between e-commerce and e-business, but are distinct concepts. E-commerce is used in information and communications technology (ICT) transactions between and among businesses (company-to-consumer transactions) as well as business-to-consumer transactions (companies-to-consumers transactions). On the other hand, ICT is utilized in e-business to improve our company.⁸ This comprises all processes carried out over computer-mediated Internet by a business organization (whether a for-profit, government or non-profit entity). "The transformation of an organization's operations into added consumer value by applying new technology innovations, theory and programming paradigms" is a more detailed concept of e-business.

E-Commerce & Consumer Protection Act

Consumer Protection Act, 2019 and Information Technology Act, 2000 are the current two legislations that governs e-commerce in India. However, there are various lacunas which exist when it comes to stringent punishments and intermediary liability clauses in these enactments. Hence, they prove to be quite inefficient in curbing issues arising in e-commerce.

There is nothing in the Consumer Protection Act against counterfeit goods sold on websites like Amazon, Flipkart, The Bill was passed on July 30 in Lok Sabha and August in Rajya Sabha. During the debate on the

⁷ Hina Kausar: E-commerce and the Right of Consumer, 2016, Manupatra.

⁸ Pankhuri Agarwal: Online Marketplaces and Intermediary Liability- New Rules of the Game, May 2017, Spicy IP: De-coding IPR.

draft, Members expressed some remarks in both houses and pointed out that the bill did not address the rights of consumers on e-commerce platforms. Because of the rise of e-commerce websites, many counterfeit products are sold. The legislation has no comment over products sold at e-commerce sites such as Amazon, Flipkart and so on. If one ordered a watch, he only discovers that it is a fake after opening the packet. Such sites claim to sell a Sony phone, but instead you get a counterfeit product manufactured in China. However, e-commerce sites never take any responsibility for it.

Governance is the broad economic field that deals with the design of the regulatory system through which trade is conducted smoothly. Economic regulation theory explores most often how collective action by individuals impacts market incentives under government auspices. The role of government in regulating marketing operations must be to contribute to the development, production, communication and delivery to consumers of an efficient system. It should create standardization and development of marketing tools and techniques for consumer benefit.

The DCA and several e-commerce platforms facilitate a proposal for the creation of money back or compensation mechanism for fake products sold via online platforms in our country, in addition to The Department for Industrial Policy and Promotion (DIPP). Nonetheless, it will be a voluntary cash back scheme that is likely to fail the target.

According to the report, clients sold a counterfeit product can make a complaint and it will be easy to determine whether the product concerned actually has been counterfeit or not following such an enquiry. The discussions were still premature, so the functioning of this mechanism is still not properly defined. One DIPP official has said to the Business Line that the payout mechanism will focus primarily on cases that are not covered by most e-commerce platforms for the usual 30 day replacement period. The official stated, for example, that a customer could be made aware that an online mobile phone that was purchased is only counterfeit if it was forwarded to be repaired a couple of months later. On 13 and 14 March 2018, DIPP has organized a National Conference on Counterfeiting and Role of Enforcement agencies, which will "convey dialog and exchange good practice to enforcement agencies, attorneys and representatives of industry and provide new ideas to further enhance the IPR eco-protection system. There is no new phenomenon in the nuisance of counterfeit products. Several cases of fake or falsified products have been reported in all the major marketplaces of e-commerce in India for the past three years⁹

The main purpose of a trademark is to associate the customer with the fabricator. It makes it possible to bring the consumer closer to the producer. Today, consumers require safety and continuous quality assurance. Furthermore, since the manufacturer can differentiate its products from others through the use of a trademark, the consumer has a full understanding of the benefits of using that particular product. The trade mark's registration grants the owner the exclusive right to use the trademark. It is therefore his responsibility to educate consumers about his product's unique features in relation to other manufacturer's product. The main reason is that the consumers are aware of the products and their manufactures. Nearly every product now has many alternatives available. Thus the manufacturer or the owner of the trademark must fulfill the consumer's expectations to make their trademark acceptable.

Although counterfeit goods in e-commerce portals continue to grow, the selling of such counterfeited products in such portals does not require strict regulations or legislation. Section 79 of the IT Act provides intermediaries with safe have ensured that they respond to complaints received and that they do not allow their forum to be used in full to violate the law. However the need for a proper e-commerce statute and for consumer protection in all areas involved to understand its accountability, responsibility and marketplaces has been emphasized several times before. There is no doubt that in this new technological era online aggregators and markets are good for consumers and competition.

⁹ Hina Kausar: E-Commerce Guidelines for Consumer Protection, 2019, An Attempt to Reign the E-Commerce Sector, Manupatra.

E-Commerce and Intermediary Liability

In India, the evolution of e-commerce has focused heavily on the issue of intermediary liability in India. The first case was in *Avanish Bajaj v State (NCT of Delhi)*,¹⁰ known as the Baze.com case. The problem arose. In this case the CEO of Barce.com (now eBay in) Mr. Vanish Bajaj was arrested after a user posted an offensive video clip for sale on the web. It held that the websites of the e-commerce company can be held accountable under the Indian Penal Code 1860 and the 2000 IT Act, while the Delhi High Court quashed Mr. Bajaj for procedural reasons. It also held. That decision led to a leading appeal by the industry to amend the IT Act to protect brokers from their websites responsibility for content produced by the customer. The IT Act defines intermediaries specifically for online markets including e-commerce websites. In Section 79(1) of the IT Act it is stated that intermediaries are not liable for information made available to third parties, usually excluded from intermediary's liability, which in compliance with Article 79 of the Information Technology Act, 2000 is the default position in Indian law. However, Section 79(1)", which grants a general exemption from liability, is subject to Sections 79(2) and 79(3), which lay down certain conditions under which protection is granted to intermediaries.¹¹ The intermediary shall not initiate, select or otherwise modify this communication, that he or she fulfills his or her duties under the Act. However, the exemption does not extend when "conspired, encouraged or induced" to commit such an unconstitutional act by the intermediary. Thus, it is quite evident that the exemption of intermediary liability and selling of counterfeited goods is a major problem faced by the consumers in E-commerce.

Concept of Secondary Liability of Trademark Infringement with respect to Judicial Pronouncement of US and UK

Secondary liability is a general theory of wrongful law which occurs when a party contributes to the performance of acts performed directly or contributing by another party, permits them, induces them, or otherwise This forms the foundation for unfair competition rule, Secondary liability has two types: vicarious liability and secondary liability. Vicarious liability for both of them is a harsher liability. The secondary liability of a Vicarious Infringement is a form of direct infringement based on the Superior Respondent Common Law principle. If someone has the right and the capacity to monitor the infringement activity and has a direct financial interest in such activities, an entity may be held liable for the infringement activity committed by another person. The occurrence of a direct breach is required to establish the claim for an assistant breach; however the alleged infringer does not have to be motivated or aware of the breach. If so, Contributive responsibility: it is a tortious responsibility to demand and assist and aid the infringement, in other words when a producer or dealer deliberately induces someone else to breach a trade mark. Whilst the principle of Vicarious Liability is apparent in the third party's right to control the conduct of the actual violator, the third party receives a direct financial gain from the infringement. When: The defendant understands the contravention and the defendant makes a substantial contribution to the contravention, the principle of co-responsibility comes into play. In particular, contribution liability is based on the principle that even when parties have not caused damage directly, they should be held liable for their contribution to damages. First, in 1924, the Supreme Court acknowledged the doctrine of contribution offenses, in *William R. Warner & Co. v. Eli Lilly & Co.*¹² In this case, the salesman for the defendant, a manufacturer, suggested to retail dealers that defendant's product could be imperceptibly substituted for the plaintiff's product. Despite the fact that the manufacturer itself did not use plaintiff's mark and the retail dealers were not deceived, the Court found liability, stating that the wrong was in designedly enabling the dealers to palm off the preparation as that of the respondent.

In the case *L'Oreal v. eBay, International AG*¹³ The proceedings was regarding the selling of L'Oreal items on the online marketplace run by eBay without L'Oreal's agreement, legal action was taken by eBay Inc. and its subsidiaries against L'Oréal SA and its subsidiaries Lancôme parfumes et Cie SNC, Laboratoire Garnier & Cie. L'Oreal was a producer and provider of cosmetics, hair care products, and perfumes. It had a closed, selective distribution network where approved wholesalers couldn't sell to other distributors. Conversely, eBay has an online marketplace that gives vendors a location to open online stores on eBay websites. eBay then makes it possible for potential customers to place bids on things that merchants are offering. L'Oreal expressed to eBay its concerns regarding the pervasiveness of counterfeit items being sold on the website on May 22, 2007. And

¹⁰ *Avanish Bajaj v State (NCT of Delhi)*, 116 (2005) DLT427.

¹¹ Pavan Duggal: *Law of Intermediaries*, Pg No. 232-272 (2016).

¹² *William R. Warner & Co. v. Eli Lilly & Co.*, 600 F.3d 93 (2d Cir, 2010).

¹³ *L'Oreal v. eBay, International AG*, 658 F.3d 936 (9th Cir 2011).

soon after, eBay was the target of a trademark infringement lawsuit. The Court of Justice of the European Union stressed and examined whether eBay could assert protection from secondary liability under the EU's E-commerce Directive if the display of the sign, which is identical to the registered mark, in the sponsored link constituted 'use' of L'Oreal's trademarks "in the course of trade". The Court of Justice ruled that although eBay has shown the sign and some specific terms related to L'Oreal's trademarks on Google search engine to offer sales to potential customers, it has not utilized the registered trademark of L'Oreal for its own commercial objectives. From this vantage point, the owner of the internet marketplace was acting as advertising. According to the court, a trademark owner has the right to stop an operator of an online marketplace from using his trademark in advertisements for goods because those goods make it difficult for potential customers to determine whether the goods in question are genuine and do not allow reasonably well-informed and reasonably observant internet users to make that determination or from an undertaking economically linked to that proprietor or, on the contrary, originate from a third party. While observing what construes 'active role'. The operator "plays such a role when it provides assistance which entails, in particular, optimizing the presentation of the offers for sale in question or promoting them," according to the court's interpretation of Article 14 of Directive 2000/31. As a result, the court determined that the defendant had no active involvement in the matter. Nevertheless, the court also ruled that the owner of the online marketplace is not liable if, despite knowing of the facts and circumstances, he failed to take any action to stop illegal sales from occurring at his portal. The court granted L'Oreal an injunction for the grounds mentioned above.

Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc¹⁴ Plaintiff Louis Vuitton Malletier S.A. ("Vuitton") sells luxury goods under the famous LV mark. Defendant Akanoc Solutions, Inc. ("Akanoc") provided web-hosting services to websites selling counterfeit LV goods. Despite numerous notices of infringement sent by Vuitton placing Akanoc on notice of the counterfeit websites and requesting their removal from his hosting service, but he neither responded nor removed the infringing content. Vuitton sued Akanoc for contributory trademark and copyright infringement. The suit was assessed under 4 heads such as Contributory trademark infringement, vicarious trademark infringement, Contributory copyright infringement, and vicarious copyright Infringement. The court while relying on the above case referred to Applied Info. Sciences Corp. v. eBay, Inc." held that in order to establish direct infringement of a trademark, a plaintiff must show: Ownership of a valid trademark and a likelihood of confusion resulting from a defendant's alleged infringing use.

Therefore, it can be said that the concept of secondary liability of Trademark infringement which is not yet addressed in any Indian statutes Even Indian Court did not get an opportunity to decide a case on secondary liability of trademark infringement, But the issue between Royal Enfield & EBay was the first case addressed on secondary liability on copyright infringement but still the trial is pending before the court. Whereas there is no cases to be quote under secondary liability of trademark infringement. Convenient for international courts, they have appropriate legislations and directives that would help them deal with the subject. The Indian courts have yet to address the issue critically and bridge this important gap of liability of 3rd party in a trademark infringement in the cyberspace. Fortunately the international courts have critically analyzed the subject and have set an enlightening, fitting and instructive path for Indian courts.

Conclusion

The proliferation of counterfeited goods on e-commerce portals in India presents a significant challenge, notably in the context of trademark infringement. Trademark infringement in the e-commerce sector has become a prevalent issue due to the ease with which counterfeit products can be sold online. To combat this problem, India has established such a legal framework which regulates e-commerce and addresses the issues related to trademark infringement. However, notable gaps in these laws exists which needs to be addressed. Counterfeiting of goods has a substantial impact on trademark infringement. They undermine the trust of the consumers; bring down the brand integrity and in-turn impacts the overall economy. They pose serious risks to public health and safety; as such counterfeited goods fail to meet the quality and safety standards. Moreover, these products lead to heavy losses in revenue for legitimate businesses as well.

¹⁴ *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc*, 621 F.3d 852 (8th Cir. 2013)

E-commerce portals are considered intermediaries under Indian Law, which means they act as a bridge between sellers and buyers, providing a platform for transactions to take place. However, under the current scenario, intermediaries are not held liable for trademark infringement occurring on their platforms. A blanket protection has been provided to them under the IT Act, 2000. This lack of secondary liability essentially means that e-commerce portals are not held accountable for the sale of counterfeit goods by the third-party sellers using their platforms to sell their goods and services.

The absence of secondary liability for e-commerce portals poses a significant gap in the legal framework of India. While this model may have been suitable when the e-commerce was in its nascent stages, but the explosive growth of online trade and commerce demands a reassessment of the law. Secondary Liability would create a more balanced and equitable approach to addressing trademark infringement. It would encourage e-commerce platforms to implement more stringent quality control measures, actively monitor their listings and cooperate with trademark owners to prevent counterfeits from being sold on their platforms.

In the light of the considerations, there is an urgent need for the introduction of secondary liability regulations in India, specifically tailored to address trademark infringement on e-commerce platforms. Such regulations would encourage them to collaborate with brand owners, implement strict seller verification procedures and swiftly removing the suspected counterfeit products. This approach will safeguard the right of trademark owners as well the rights of the consumers from unknowingly purchasing such counterfeited products. Thus by abridging this gap India can foster healthier, trustworthy and a sustainable e-commerce environment.

